IN THE

SUPREME COURT OF THE UNITED STATES

TERM 1979

NO. 79-776

ERICH KOKER and BEATRICE E. KOKER, husband and wife,
Plaintiff/Appellant/Petitioner

V

NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, Jr.

Defendants,
Respondents.

JURISDICTIONAL STATEMENT

ON APPEAL FROM:
THE SUPREME COURT OF THE STATE OF WASHINGTON
#45846 And #46169

COURT OF APPEALS DIVISION I STATE OF WASHINGTON
#4916-I

EXTENSION OF TIME FOR JURISDICTION STATEMENT GRANTED BY THE SUPREME COURT OF THE UNITED STATES Appendix A-15(c)(d)

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Pro Se

I N D E X

+ Court of Appeals Decision p 55

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APPENDIX: THIRD SECTION:

II Citation II See: Page 92 Herein
Second Citation

Reference: Chicago B & Q R. Co V Chicago
166 U.S. 226, 246:

Graham v Gill,
223 U. S. 643, 645:

I N D E X

APPENDIX: FOURTH SECTION:

TABLE OF CASES

I N D E X

U. S. C. A.

TREATISE

WASHINGTON STATE CONSTITUTION

WASHINGTON STATE STATUTES

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OTHER

REPEAL OF REHEARING

APPEAL TO THE UNITED STATES SUPREME COURT

APPENDIX A-15(a)(b)

EXTENSION OF TIME GRANTED

APPENDIX A-15(c)(d)

THIS JURISDICTIONAL STATEMENT WILL BE WRITTEN AS CONSTRUCTIVE REPORTING OF FACTS, AND NOT AS CRITICISM OF HONORABLE JUDGES WHOM I RESPECT.

Beatrice E. Koker
Pro Se

JURISDICTIONAL STATEMENT

A Revelation: Appendix: B-1: B-2: B-3:
B-4: B-5: B-6:
B-7: B-8:

This appeal to the United States Supreme Court is for reversal of an unfair trial for new trial or in the alternative additur, and for reversal of the Washington State Court Of Appeals Division I, and appeal of denial of Petition for Review BECAUSE the nature of the trial included deceit, untruths, misleading the jury, misrepresention and suppression of fact, concealment, ommissions, wrongful acts, abuse of discretion by lack of court investigation and other.

There is a jury so confused it took the jury foreman approximately 2 hours to convince the jurors the victim of permanent injuries is NOT GUILTY! The shock is two-fold: Not only the fact of having to convince the jury the victim is innocent in a civil action, but THE TIME ELEMENT in hours that it took to convince the jurors of the innocence of an accident, the victim of permanent injuries.

The circumstances of this trial cannot ever meet the fair trial standards under the Constitution of the United States.

Surprise: The defense attorney in this trial cross-examined Beatrice Koker, this petitioner, for a TOTAL OF 11 LINES.

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CHRONOLOGICAL SUMMARY

JURISDICTIONAL STATEMENT

Quoting: HAND, Learned - 9 Brief Case No. 4 p 5 (1951)

"If we are to keep our democracy,
there must be one commandment:
Thou shalt not ration justice."

PROCEEDINGS BELOW

Chronological Summary

June 4, 1971: THE ACCIDENT Appendix A-19:

February 10, 1975: First Trial. MISTRIAL

June 9, 1976: SECOND TRIAL BEGAN

June 15, 1976: SECOND TRIAL ENDED.

Please Note: In the Chronological Summary to follow, the numbers to the left of the orders and rulings and information will be correlated to the numbers of the Appendix. (A)

The length of the summary is due to the ban of rehearing in the State of Washington Supreme Court. ROA I-50 repealed.

COURT OF APPEALS

(1) June 15, 1976: JURY VERDICT. $4,600.

(2) June 30, 1976: MOTION FOR NEW TRIAL OR IN THE ALTERNATIVE ADDITUR CR 59 (1)(2)(3)(4)(5)(6)(7)(8)(9): "DENIED"

(3) July 29, 1976: NOTICE OF APPEAL TO Court of Appeals Division I - State of Wash.

(4) June 5, 1978: "AFFIRMED" TRIAL COURT

(5) August 8, 1978: MOTION RECONSIDERATION "DENIED"

STATE OF WASHINGTON SUPREME COURT

(6) February 2, 1979: EN BANC "DENIAL" PETITION FOR REVIEW

(7) February 6, 1979: "REHEARING BAN"

ROA I-50 repealed in State of Washington and no rehearing possible. Letter so stating.

Please Note: Letter-evidence found. No rehearing allowed. Jurisdiction is now in the Court of Appeals Division I.

THE MANDATE HAD NOT BEEN ISSUED!

COURT OF APPEALS

(8) March 6, 1979: Letter-Evidence Motion Re: deceit, submitted to Court of Appeals before mandate was issued. Clerk denied. Resubmitted under Rule 17.7.

The notification letter of March 6, 1979 was sent to petitioner 6 days after the Court of Appeals on motions: "denied."

(9) March 7, 1979: Mandate issued within 24 hours of notification of denial of motions. Motions denied 6 days before.

(10) Docket Card does not list the notification letter of March 6, 1979 in Appendix A-8

(11) April 13, 1979: MOTION TO RECALL MANDATE "DENIED."

STATE OF WASHINGTON SUPREME COURT

(12) (12-(a)(12-(b) April 16, 1979: APPEAL-DISCRETIONARY REVIEW. To review denial of motion to recall mandate, denial of motion RAP 12.7(a) Letter-Evidence and 17.7 (same). To reopen petition for review. All to be done EN BANC.

(13) May 31, 1979: DISCRETIONARY REVIEW "DENIED" BY COMMISSIONER

STATE OF WASHINGTON SUPREME COURT

(13-(a) June 8, 1979: MOTION 17.7 TO MODIFY denial of discretionary review by commissioner. Entire motion attached to indicate reason for denial of motion erroneous.

(14) July 20, 1979: "DENIED." FINAL RULING EXHAUSTION OF REMEDIES IN STATE

UNITED STATES SUPREME COURT

(15) August 7, 1979: APPEAL FOR UNITED STATES SUPREME COURT.

(16) MEMORANDUM: From deputy Federal District VERIFIES ORIGINAL FILES ARE IN STATE SUPREME CT.

COURT OF APPEALS

(17) September 10, 1979: ORIGINAL FILE OF petitioner Appellate Court #4916-I and Exhibits all records released from custody, jurisdiction, protection of The Court of Appeals Division I. RELEASE OF THE ENTIRE FILE NOT DOCKETED UNTIL AFTER DISCOVERY FILE WAS MISSING BY PETITIONER. Appendix A-17(a): Appendix A-17(b): PROOF.

STATE OF WASHINGTON SUPREME COURT

(A-18(a): (A-18(b): October 1, 1979:

Motion Special Accelerated Proceedings to Washington State Supreme Court to Re-Certify records out of custody of appellate court 46 days. Motion made under RAP 17.7 to insure the ruling by JUDGES ONLY.

(A-23:) October 10, 1979: The Clerk of the State Supreme Court ruled to shelve the motion in which terms and sanctions were asked. Recertification immediately as there is a pending civil action affected by this act of releasing original files still on appeal and in civil action.

(A-24:) October 11, 1979: PETITIONER'S REPLY.

IIII IIII

Please Note: A motion for rehearingwould have eliminated Appendix A-8: A-9: A-10: A-11: A-12(a): A-12(b): A-13: A-13(a): A-14:

The proper and most expeditious way to have had finality of ruling in this case, would be one ruling: "REHEARING" after the denial of petition for review.

The federal grounds for jurisdiction relates to the repealing of "rehearing" ROA I-50. It is evident to what extent this appeal has been affected by the denial of a constitutional right.

JURISDICTIONAL STATEMENT

OPINIONS BELOW
(Explained)

The major part of a decade has elapsed since the automobile wreck June 4, 1971. The defense admitted liability as the defendant was drinking, speeding, drove through an arterial stop sign and had defective brakes. Plaintiff's car was totaled out. Appendix A-19:

The first trial ended in mistrial February 1975. The reason presented by the defense attorney not to go on with 11 jurors was that plaintiff doctor "refused" to testify. The doctor disproved that as a reason in his own handwriting deciphered in Appendix A-21: Further information plus revealing untruth told in obtaining continuance by defense attorney: Appendix A-20:

The attitude of defense attorney towards plaintiff in 1975 trial is in Appendix B-5:

TRIAL OF 1976 AND THE APPEAL IN THE STATE:

All opinions below in the State of Wash. Courts have been adverse to plaintiff/petitioner. This appeal to the United States Supreme Court on Federal Grounds is an appeal from the trial court's denial of motion for new trial or in the alternative additur under CR 59 (1)(2)(3)(4)(5)(6)(7)(8)(9). App. A-2: And all elements of the Notice of Appeal to the United States Supreme Court. Appendix: A-15(a) and Appendix A-15(b):

The damage for permanent injuries jury verdict is $4,600. for permanent drop foot injury, wearing a leg brace for life, and permanent cervical injury and a knee injury. Appendix A-1: (Jury Verdict)

The jury was so confused it took a jury foreman approximately 2 hours to CONVINCE the jury the plaintiff-victim was "not guilty." Appendix B-1:

The appeal to Court of Appeals Division I State of Washington was filed pro se. The attorney of record abandoned plaintiff after trial without counsel. Appendix A-3:

The Court of Appeals "affirmed" the jury award of $4,600. for a drop foot injury plus other injuries. Appendix A-4:

The Court of Appeals decision is in conflict with their own ruling in another case in which they state that $145,000. is "within the bounds of sensible thought." This was for a drop foot injury! Ryan V Westgard 12 Wash App 500 (1975)

A motion for reconsideration was filed with the court of Appeals and "DENIED." Appendix A-5:

A petition for review to the Washington State Supreme Court "DENIED EN BANC." Appendix A-6:

Beatrice Koker sent notice of intention for motion for rehearing and to verify the date of filing and was notified by the State Supreme Court there is no rehearing as ROA I-50 is repealed. Appendix A-7:

The mandate had not been issued. The petitioner found a letter imperative to the deceit in trial. No rehearing. The letter-evidence was filed in the Court of Appeals RAP 12.7(a). The clerk of that court sent it back. The motion was refiled under RAP 17.7 and the judges accepted the motion and ruled upon it. "Denied."

The denial was done 6 days before the petitioner was notified and within 24 hours of notification of the denied ruling, the mandate was issued. The right to ask for review on a denied motion was estopped. Appendix: A-8: Appendix A-9:

The docket card of the Court of Appeals does not record the letter of notice of denial of a motion, it is missing. Appendix A-10:

Motion to recall mandate "denied." Appendix A-11:

An appeal was put into the State Supreme Court to review the denial of the ruling on the motion regarding letter-evidence of deceit in trial, to recall the mandate and open the petition for review EN BANC. The State Supreme Court called my appeal a "discretionary review." Appendix A-12: Appendix A-12(a): Appendix A-12(b):

The entirety of two documents are attached only after thorough consideration, but federal grounds are involved in the entire procedures which took place for five months plus after denial of a petition for review en banc. The ban of rehearing is fatal to justice, and due process.

The written opinion by the State Supreme Court Commissioner warrants the enclosure. His opinion mentions the word "impropriety" that the petitioner somehow thinks went on in the proceedings below.

Deceit and untruths in a court of law by the quasi judicial officers of the court and proven from the record can hardly be identified as mere improprieties. Appendix: B-2: Appendix: B-3: B-4: B-5: (Affidavits)

The commissioner also indicated no grounds were given by petitioner for relief under RAP 13.5(b)(2). The appeal-discretionary review clearly indicates the essence of review under that rule and the reasons for not being in freedom to act legally. To endure a premature mandate cutting off a right to ASK FOR REVIEW is limiting a party to act. To have vital letter-evidence and unable to penetrate the maze of the buffer zone rulings is limiting a party to act.

The Commissioner "denied" the discretionary review: Appendix A-13:

Appeal of that denial was made to the State Supreme Court and is attached in the entirety. Appendix A-13(a): The Supreme Court of Washington refused to modify the commissioner's ruling. Appendix A-14:

The absence of the original file from the appellate court was not docketed UNTIL AFTER DISCOVERY by petitioner that the files were missing out of the jurisdiction of the court. Appendix A-15(a): Appendix A-15(b):

A memorandum from a deputy of Federal District Court verifies the original files to be in the State Supreme Court. Appendix A-16:

September 10, 1979 discovery of entire original file #4916-I removed from the Court of Appeals Division I. The original file was out of the custody, protection and the jurisdiction of the appellate court 46 days.

The release of the original file was not docketed in appellate court UNTIL AFTER THE DISCOVERY by petitioner that the files were gone. Appendix A-17(a): Appendix A-17(b)

Special Accelerated Proceeding Motion submitted to Washington State Supreme Court to re-certify records. Three copies of the entire motion sent to the UNITED STATES SUPREME COURT. First 2 pages xeroxed and attached herein for identification purposes. Appendix A-18(a): Appendix A-18(b):

The motion states specifically page 2 the motion was to be ruled upon by the State Supreme Court Judges only. There was not to be any ruling by any commissioner or clerk of any court or anyone else but the HONORABLE JUDGES OF STATE SUPREME COURT.

Letter from Clerk of State of Washington State Supreme Court ruling no further action at this time. Appendix A-23: ANSWER: A-24:

JURISDICTION

JURISDICTION

Jurisdiction is conferred upon the United States Supreme Court pursuant to 28 U.S.C.A. 1257(3) and the Constitution of the United States as per the Appeal. Appendix A-15 (a)(b)

Rehearing Rule ROA I-50 has been repealed and this is repugnant to the Constitution of the United States State v Pudman 177 P 2d 376, 65 Ariz 197, and to the Washington State Constitution Art 4, §2 p 335.

There is a NEW ISSUE "Under color of law" directly related to certification of the original record to this appeal pursuant to 42 U.S.C.A. 1983-1984-1985 and 28 U.S.C.A. 1343 (1)(2)(3)(4)

In the event the United States Supreme Court does not consider appeal to be the proper mode of review, appellant/petitioner requests the papers upon which this appeal is taken to be regarded and acted upon as petition for certiorari pursuant to 28 U.S.C.A. 2103.

Nature Of Proceedings:

Chronological Summary pages 1 through 10 herein contains the dates and explanations of rulings, orders and decisions on appeal. This appeal began from a personal injury trial, and denial of motion for new trial or additur. Petitioner became pro se and discovered deceit and untruths proven from the record and reported.

The Court of Appeals upheld denial of new trial or additur. The petition for review was denied en banc sealing injustice in this state.

Rehearing rule repealed. A fruitless search began through motions and denials until July 20, 1979.

JURISDICTION (Cont'd)

New Issue For Jurisdiction:

The entire original file of records, papers, exhibits, Clerk's Papers, Briefs, Report of Proceedings, everything of #4916-I was released from the custody of the Court of Appeals Division I for 46 days in direct disregard of 28 U.S.C.A. Rule 1.

Appendix A-17(a)(b) proves the release of these original records was not even docketed until this petitioner discovered the entire original file was missing from the court.

The Appellate Court knew there was a pending appeal in the United States Supreme Court because a copy of the appeal was sent to them certified mail as soon as the appeal was filed August 7, 1979.

Appendix A-16 is a memo from the deputy of the Federal District Court which verified that petitioner's file and records were in the State Supreme Court.

He was given erroneous information. Protection was not given my original records in the State Supreme Court either. The entire file was sent to the Court of Appeals on July 25, 1979 - five days after the final decision. The original records in their entirety from 4916-I was in the hands of a civil action adversary seven days after the final decision in the State Supreme Court and were kept for 46 days. "Under color of law" is present.

JURISDICTION (Cont'd)

Appeal From Both Courts:

The jurisdiction of this appeal is from both the Washington State Court of Appeals Division I and the State Supreme Court because the denial of rehearing rule.

No rehearing necessitated Motions to submit imperative letter-evidence as a two-way proof of deceit of Error 3(a). The motions were all denied, review of motions denied, appeal denied, justice denied.

Standing: Controversy: Justicability: Cases:

The United States Supreme Court is being respectfully called upon to adjudge the legal rights of litigants in actual controversy. There is a personal interest in the outcome and the dispute does touch upon legal relations of the parties having the adverse interests.

Unfair Trial:

The complaining party has suffered permanent injury, has been denied a fair trial and no remedy or redress on appeal, there is humiliation, trauma and financial havoc of the extensive debts as the result of the injury, the result of the litigation, result of the unfair trial and the result of a futile appeal.

Is justice an endangered species?

The verdict of $4,600. for a dropfoot permanent injury and permanent cervical injury will NEVER be accepted by this petitioner. To partake in acceptance of a verdict obtained in deceit, untruths, misleading the jury, misrepresentation and suppression of fact, concealment, fraud of the court would make me a party to the wrongdoing and this will not be. It is public record since 1978 that I have refused this $4,600. and the reasons.

$145,000. is a "sensible award" for a drop foot injury says the Washington State Court of Appeals Division I - in Ryan V Westgard 12 Wash App 500 (1975). The very same Court of Appeals that upheld $4,600. for drop foot, cervical and other injuries for me. THAT DOES NOT MAKE SENSE.

The jury in the case at bar was so confused as to be "voting guilty or not guilty" in a defense admitted liability personal injury case. The Court of Appeals upheld the jury verdict.

The trial court did not know of the jury confusion, nor the criminal determination, nor the lies and deceit in his courtroom. But the pro se petitioner informed the Court of Appeals who had the power and authority to rectify the wrong and did nothing. Appendix B-1 Jury Foreman Affidavit

There was no mention in the decision of Washington State Court of Appeals Division I about their $145,000. upheld "sensible award" in Ryan v Westgard supra.

Justice Is The Reality Of Restitution:

A deceitful trial is a dead-letter-office for a fair trial. There is justicability and reason to come to the United States Supreme Court seeking help, because the State Courts have closed the door, sealed the door, then removed the door of remedy and redress for an unfair trial, leaving this petitioner abandoned on the doorstep of the Constitution of the United States minus her legal rights.

Injury:

The injury is denial of a fair trial, denial of just damages for permanent injuries, denial of Constitutional rights in a trauma-trial-of- trickery, there is injury in the futility of appeal and a decision porporting technicalities as law. The State Courts have incorrectly adjudged Federal Constitutional Rights.

There is injury in physical fact, and physical injury worsened from litigation stress, economic injury, aftermath and repercussions of injury in a "wrongful life." There is injury of financial obligations owed because of injury and appeals.

All injury traceable to defendant's negligent act and admitted liability in a personal injury action, followed by an unfair trial, then an appeal pro se with proven wrong from the record and the wrong upheld on appeal. A chasm of injustice unbridged and no remedy.

"Standing" From Those Who Know:

People who loan the money for medical expenses and litigation know the standing.

The medical persons who have treated this petitioner for her injuries, and given repeated medical tests to prove the injury, know the injuries and the standing. Doctor's Affidavit Appendix B-7: Injury from fall: Appendix B-8:

Psychiatrist request for new trial and a character reference from former member of the Mayor's Office Seattle - now retired. Mr. Keene Appendix A-22:

Petitioners family lives with the standing.

Those strangers and acquaintances know the standing from the sight of crippledness.

The unkindly know the standing when they will not tolerate slowness of petitioner, thus shutting the doors of buildings, elevators, busses, preventing her from entering. They are too impatient to wait, too unkind to tolerate. Rejection is standing.

A passenger in a passing car described the standing when he called out the window to the petitioner: "Hey you old cripple, you'd be better off dead." Appendix B-9:

God Knows The Standing.

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

JURISDICTION: ARTICLE III CONSTITUTION OF THE UNITED STATES §2, Cl. 1, Note 17 p 76

"United States Supreme Court must take notice on its own motion where jurisdiction does not appear.

Butler v Dexter, Tex 1976, 96 S. Ct. 1527, 425 U. S. 262, 47 L Ed 2d 774

JURISDICTION: ARTICLE III CONSTITUTION OF THE UNITED STATES §1 Note 121 p 12

"Policy of federal courts is to decide cases on basis of substantial rights rather than technicalities."

Hines v Wainwright, C. A. Fla 1976 539 F 2d 433

JURISDICTION: USCA AMENDMENT 1:

"Standing should be found whenever a plaintiff is faced with a choice of either asserting a Constitutional claim or complying with and abetting a discriminatory policy."

Wilson v Chancellor 418 F Supp 1358

JURISDICTION: CONSTITUTION OF THE UNITED STATES ANNOTATED AMENDMENT 14 Note 480 p 394

"Right to action by one injured as result of negligence of another against the negligent party to recover damages sustained by reason of such injury is "property" within protection of this amendment." Martinez v Fox Valley Bus Lines D. C. Ill. 1930 17 F Supp 576

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES ANNOTATED ARTICLE 3 §2, cl 1, Note 28 p 226 Conduct Of Trial:

"Where particular mode of trial being used by many judges is so cumbersome, confusing and time-consuming that it places completely unnecessary obstacles in paths of litigants seeking justice."

Fitzgerald v U. S. Lines Co. N. Y. (1963) 83 S. Ct. 1646, 374 U. S. 16, 10 L Ed 2d 720 Rehearing Denied 84 S. Ct. 26 375 U. S. 870, 11 L Ed 2d 90

CONSTITUTION OF THE UNITED STATES ANNOTATED ARTICLE 3 §1, Note 121 Respondibility of the Judiciary:

"Policy of federal courts is to decide cases on the basis of substantive rights rather than technicalities."

Hines v Wainwright C. A. Fla (1976) 539 F 2d 433

BECAUSE OF THE REPEAL OF THE REHEARING IN STATE SUPREME COURT AND THE SEARCH TO BE HEARD IN MOTIONS WAS UNSUCCESSFUL, THIS APPEAL MUST BE TAKEN FROM BOTH THE COURT OF APPEALS DIVISION I AND THE STATE SUPREME COURT OF THE STATE OF WASHINGTON.

QUESTIONS PRESENTED

QUESTIONS PRESENTED

I

WHETHER THERE IS DENIAL OF DUE PROCESS OF LAW IN DENIAL OF FAIR TRIAL AND DENIAL OF THE "DAY IN COURT" BOTH IN TRIAL COURT AND IN THE ATTEMPTED REHEARING, AND DENIAL OF REDRESS AND REMEDY FOR WRONGS COMMITTED IN THE TRIAL AND APPELLATE STRUCTURE COURTS OF THE STATE OF WASHINGTON, DENIAL OF CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND EQUAL PROTECTION IN EQUAL CIRCUMSTANCES AND WHETHER THERE IS TRANSGRESSION AND TRESPASS UPON THE STATE CONSTITUTION AND THE UNITED STATES CONSTITUTION PROTECTION FOR EVERY CITIZEN THEREIN WHEN THE FACTS ARE:

Deceit and wrongful acts in the trial, lack of diligent investigation by the judge, the confused jury as per jury foreman affidavit Appendix B-1, inadequate damages of $4,600. for permanent drop foot injury and permanent cervical injury, denial of new trial or additur by judge who did not investigate and thus did not know of deceit in his courtroom, the decision of "Affirmed" by the Court of Appeals Div I, ignoring their own ruling that $145,000. is a "sensible award" for a drop foot and in conflict with that ruling upholding $4.600. for a drop foot injury to this petitioner plus other, and using the technicalities, inaccuracies, misunderstandings as proven in Statement of the Case PART II herein, denial of petition for review en banc, repeal of the "rehearing Rule ROA I-50 and the Appendix A-7 letter stating "No Rehearing - No Reconsideration", thus leaving no way to submit an evidence-letter except in desperation pleas and motions and appeals from petitioner from February 9, 1979 until July 20, 1979 and the final ruling is by a COMMISSIONER and modification denied.

QUESTIONS PRESENTED (CONT'D)

II

WHETHER released "under color of law" original files, records, papers, exhibits on appeal #4916-I, out of the jurisdiction of the Court of Appeals for 46 days, is a NEW ISSUE before the Supreme Court which has need of these files certified if jurisdiction is accepted?

HOW could the original records be certified if the records are out of the custody of the court, and the certification presumes the files have been in the custody and control of the State Appellate Structure since they were filed?

WHETHER the release of the original files out of the custody of state appellate courts, constitutes a connecting-injustice extending from the state courts of Washington to the United States Supreme Court because there is a pending appeal in progress?

WHETHER loopholes of technicalities will be used in the State of Washington higher courts in answering for the "under color of law" injustice of releasing original files which are constitutionally prohibited in: 42 U.S.C.A. 1983: 42 U.S.C.A. 1984: 42 U.S.C.A. 1985: 28 U.S.C.A. 1343 (1)(2)(3)(4): 28 U.S.C.A. 1738: 28 U.S.C.A. Rule 1?

WHETHER the removing of the files from the COURT OF APPEALS DIVISION I is an attempt to deviate the cause of action?

QUESTIONS PRESENTED (CONT'D)

III

WHETHER affirmation in the Court of Appeals of the denial of new trial or in the alternative additur CR 59 is abuse of discretion affirming abuse of discretion of the trial court when the Appellate Court knows the facts of deceit and wrong, and the utter confusion of a jury?

WHETHER there is abuse of discretion on appeal to deny constitutional protection of a fair trial when the appellate court is made aware the judge of trial court was not aware of the wrong in his courtroom but he did not investigate?

WHETHER there is abuse of discretion on appeal to be in conflict with the appellate court's own ruling that $145,000. is a sensible award for a drop foot injury in 12 Wash App 500 (1975) while upholding a deceitful trial, a confused jury, and a $4,600. for a drop foot injury plus other injuries?

WHETHER there is denial of a constitutional right to "day in court" because the rehearing is repealed in Rule ROA I-50 in denial of due process to be heard?

WHETHER the entire decision of the Court of Appeals Division I in the Statement of the Case PART II indicates lack of constitutional rules to application in the facts?

WHETHER the court of appeals decision bypassing rules and laws and citations and authorities and precedents and conflict rulings, are replaced with technicalities as an excuse to "Affirm" a wrongful-unconstitutional-trial, immersed in deceit repugnant not only to the constitution but also to the people the constitution protects?

III

WHETHER issuance of mandate within 24 hours of notification of denial of a motion estopped due process of law in cutting off the right to ask for review of a denial of a motion?

WHETHER any citizen should have to be put in the position of desperation trying to be heard in appeal having imperative letter-evidence regarding deceit in Error 3(A) and the avenue of presentation, the rehearing, is repealed?

WHETHER the constitution will allow the repeal of a rehearing causing disregard of rights to be heard thus repugnant to the purpose of the Constitution of the United States?

WHETHER a Constitutional question presented in motions because the rehearing has been deleted, is improperly ruled upon by a Commissioner when the motion asks specifically for en banc since the original error was so ruled upon?

WHETHER justice could be done under the law when the extra-ordinary powers and rules provided for that purpose to fit any circumstance of injustice, were never used?

WHETHER the procedures used to restrain the vital evidence-letter first paragraph from ever reaching the Supreme Court Judges included the disappearance of a motion to recall the mandate?

III (Cont'd)

**** The rehearing repealed is responsible for the entire proceedings from February 9 through July 20, 1979. Had there been a rehearing in this state, the letter-evidence would have reached the supreme court en banc and been properly ruled upon. Instead of that, the evidence never reached the judges for a ruling and the petitioner is denied the right to be heard. And a Commissioner decides.

WHETHER there was constitutional reason for redress and remedy with inadequate damages and an unfair trial and a jury confused to a low point of comprehending if the jurors must determine the guilt or innocence of a victim?

WHETHER proven deceit from the record in a trial, proven untruths from the record to the judge and jury and litigants, misleading the jury and the court, confusion of the trial and the jury, misrepresentation and suppression of fact, fraudulant concealment, fraud of the court to be disregarded by the Court of Appeals and the State Supreme Court, can be allowed to remain as representing a "government of the people, by the people, for the people."?

WHETHER the victim is to be penalized for wrongful acts of others in trial and no relief on appeal?

WHETHER all adverse judgments and rulings on appeal in the appellate structure of the State of Washington can stand the scrutiny of federal examination?

QUESTIONS PRESENTED (CONT'D)

IV

Question: When there is the liar of the fact, where does that leave the trier of the fact?

Question: The principle function of a trial is to arrive at the truth. How can the truth be obtained if the protectors of the truth, the attorneys, allow deceit and untruth into the trial proceedings and the judge does not diligently investigate but trusts the quasi judicial officers of the court implicitly?

Question: Can a jury verdict be presumed correct and inviolate under the law when a trial is proven deceitful and the jury is proven confused?

Question: What impression goes to a jury of the importance of the trial when a judge announces delay of the trial to give a luncheon talk?

Question: Would the upcoming election of a judge take precedent importance unknowingly in the judge's mind to warrant delay while the judge attended a luncheon to give a talk?

Question: If this is the intention of the judge to give a talk at a luncheon, would it not be abuse of discretion to so announce to a jury such an intention which would cause a prejudicial thought the trial was not so important as a luncheon talk?

QUESTIONS PRESENTED (CONT'D)

IV

Question: Does it not indicate substantial justice was not done in petitioner's trial when the judge of trial court stated he would have awarded a far greater SUBSTANTIAL verdict?

Question: The denial of new trial or in the alternative additur was by a judge who did not diligently investigate the wrongs that happened in his courtroom. Under that circumstance, compiled with the underhanded factors in the proceedings, would this lack of investigation not have a bearing upon abuse of discretion in denying not only new trial or additur but justice as well?

Question: Can professional trust of a judge for an attorney be a form of abuse of discretion? Must the judge in trial court separate his trust of the profession from the diligence of investigating even those whom he trusts?

Question: If the lawyers do not conduct the trial in a manner befitting their Honorable Profession, who will?

Question: Does not a lawyer owe a duty of fidelity to his profession and in so doing, a duty to protect the public and a fair trial?

Question: Shall the victim of injuries be penalized for a proven unfair, deceitful trial?

IV

Question: Why is the public losing respect for the courts?

Question: The trial judge denied a motion and then said to the attorneys: "I don't know how this case operated. It looks to me it was very informally handled between counsel, you know each other and so forth."

Would it not be correct to determine that when a judge admits there is confusion in the trial, and speaks to the attorneys in the above manner, and from the record is unsure, disagrees with the verdict and would have awarded a far greater substantial damage award to petitioner, expresses doubt and hesitancy in his rulings, this would warrant diligent-diligent investigation throughout the trial?

Question: Why would the defense attorney ask for a continuance 18 days before a scheduled trial with the reason as "conflict of trial dates"? Would not the "conflicting" trial be the other trial in conflict with petitioner's trial already set and only 18 days away? App. A-20

Question: What injustice to be the victim of injuries, unfair trial and appeal, and even deliberate delays. Deceit. Could the purpose of this continuance be anything other than delay when the "conflict of trial dates" is proven to be a MOTION???

The accident June 4, 1971.
False Continuance as above 1974.
Mistrial on false premise 1975.
Deceitful, unfair trial 1976.

IV

Question: Why would the defense attorney question the plaintiff Beatrice Koker only 11 lines in the proceedings cross-examination?

Question: Does the rule of proof and the common sense rule carry the weight and preponderance of medical evidence when plaintiff has medical doctors with 25 years and more experience who tested, and retested, and proved the injuries over an extended period of 4½ and 5 years, and a psychiatrist for 15 hours before trial - - - in opposition to the defense medical of 2 doctors examining plaintiff briefly once each, one 4½ years before trial and never saw nor heard of plaintiff again, and one doctor witness 2 days before trial?

Question: Why would the defense doctor who saw plaintiff briefly 4 ½ years before trial evade questions from his own deposition while testifying in trial?

Question: Is not the testimony of the treating physician and specialist who has seen the patient a number of times during an extended period of time FAVORED over that of a physician who has seen the patient only briefly in determination of damages?

QUESTION: Is an injured victim of permanent injuries entitled to treatment of her misery? Is relief of pain necessary?

Question: What kind of medical evidence does a defense have that a plaintiff is sent to a defense medical doctor 2 days before trial when they had five years?

IV

Question: Why were the EMG reports proving the injuries never submitted to the jury in treating doctor testimony or exhibit?

Question: Why was not the treating doctor asked for proof of the drop foot injury? When the deposition holds answers to key questions never asked in court, why is not the treating doctor's deposition not opened and published wherein the key questions ARE ANSWERED?

Question: The defense attorney introduced medical reports of non-testifying doctors into the cross examination of the treating doctor and the judge made a "thin line" ruling in which he allowed the reports "not for the truth or untruth" for the plaintiff doctors only. There is a conflict case in Statement of the Case II which proves this an erroneous ruling and therefore abuse of discretion. The medical reports are 2 to 4½ years old predating the proof of injury and all examinations were superficial.

If the defense attorney was so sure of the non-testifying doctors that he wanted to present their medical reports in court, why not have the defense doctors there to testify as well as the plaintiff doctors? Why substitute elderly medical reports 2 to 4½ years old, predating the proof of injury, and why was not the jury told???

IV

Question: Why would a defense doctor examine plaintiff and find a blood pressure reading of: 210/0(zero) on the right arm and 210/70 on the left arm and NOT TELL THE PETITIONER PLAINTIFF ANYTHING ABOUT BLOOD PRESSURE - HIGH, LOW OR OTHERWISE!?

Question: What purpose of justice is served with medical reports in proceedings brought up in cross-examination predating the injury and no doctors to cross-examine?

Question: Why would the medical reports be "not for the truth or untruth" for plaintiff doctors and allowed to be considered "reliable" by a defense doctor in a double standard?

Question: Whether a medical report because of the very nature of its purpose, pertinent because of its truth, thus it cannot be pertinent to any issue in the case REGARDLESS of its truth?

Question: Whether there is prejudicial danger in allowing anything medical into the trial without the right to cross-examine in a personal injury case?

Question: Can a double standard be fair in any circumstance? Why would a judge allow the defense attorney to use two medical reports and restrict the plaintiff attorney to one of those medical reports in the same circumstance?

IV

Question: How could a judge who states in the record he is very strict about discovery rules, allow medical reports of non-testifying doctors with no chance for cross-examination?

Question: Is prejudice contagious?

Question: When a doctor changes his medical report in a deposition, is it not deceit to read the original medical report as bonafide?

Question: Why would the defense attorney deceitfully ignore the changed medical report and read the original medical report misleading the jury and the court and falsifying facts?

Question: A mistrial was called over this same doctor in 1975 saying falsely the doctor "refused" to testify. Then why isn't this doctor called to testify in the 1976 trial with testimony important enough to cancel a trial the year before? Would that not indicate the mistrial as an excuse for delay?

Question: Is there not a clue for the judge to investigate when this same doctor's name is mentioned 58 times the first two days of trial and the doctor is not called to testify?

Question: What prompted the counsel in this unfair trial to subject the court and the legal profession and themselves to such jeopardy and risk of public ridicule and disrespect?

IV

Question: Whether it is not prejudical for the defense attorney to ask personal promises to himself from the jury saying he realized he had asked difficult promises but at the end of the trial it was their job to keep those promises to the defense attorney?

Question: Whether the strong efforts to take the voir dire examination from the attorneys and give to the judges because this questioning is abused, is a factor in the confusion of this trial in the case at bar?

Question: Whether when prejudice is the most guarded-against aspect of a trial by a judge when he investigates, would the letters written by plaintiff to her treating doctor being left in view of the jurors for hours and then removed without informing the jury as to who, what when, where, how or why of the matter is prejudicial confusion of the jury and contributing to the unfairness of the trial?

Question: Whether when an attorney asks for a list from his client of information to expedite matters timewise at the deposition, that list would be allowed as an exhibit in a trial?

Question: Whether a jury is prejudiced by explanation of 25% of the list reading from the deposition, leaving 75% unexplained giving the jury the "gibberish notes" a memo of reminders out of context and no explanation and usurping an attorney's work product as an exhibit?

IV

Question: Why would the 2-day-before-trial medical defense witness have to be vouched for?

Question: Is not the compounding of insinuating questions, attacking the memory of a witness when memory is not involved, bringing up a marriage of 30 years before that ended in divorce, a deliberate attempt to put before the jury improper matters of prejudice not related to the injuries or circumstances of the trial?

Question: Does not the ligiant have the right to offer testimony which reasonable tends to support his or her own theory of the case while disproving the theory of the adversary?

Question: When a judge denies a lay witness to plaintiff in her burden of proof without prior notice, and there are precedent cases prohibiting this, is that not abuse of discretion?

Question: Would not the nature of a nerve injury demand a bevy of witness to the "before" and "after"?

Another lie was discovered recently regarding the information given to the judge in trial court that the plaintiff attorney did not know of this third lay witness until the night before trial what she would say, what she knew about it. Not true. Petitioner found carbon copies of letters written to her attorney in 1975 and 1976 informing him. There is also a witness.

IV

Question: How could a medical bill of $2,839. be identified as Ex 1 in trial and NEVER ADMITTED, if this were not the reported confused trial?

Question: How is it possible to object to a formula pattern instruction when both attorneys submitted the same instruction erroneously word for word?

Question: Does a miscarriage of justice to this petitioner also demand penalties for lack of objections in trial?

Question: Would proven misstatement of fact, misstatement of testimony, maligning doctors, and witnesses, deceit, misrepresentation and suppression of fact, misleading the jury, concealment, untruths and all proven wrongs from the record ever be considered by anyone a fair trial??

Question: Would a confused jury have the capacity understand admonitions of the court regarding instructions and other? Appellant's Civil Appeal August 1976 said: Page 2/1-2-3:

"There is no evidence or reasonable inference from the evidence to justify the verdict of $4,600. and that is contrary to law. JUDGE'S INSTRUCTIONS NOT FOLLOWED."

QUESTIONS PRESENTED (CONT'D)

IV

Question: Whether the unfair trial, the circumstances causing the unfair trial in the case at bar will have jurisdiction in the United States Supreme Court on both Federal and Non-Federal Grounds?

Questions: Is the public interest in fair trial doomed to outrage when wrongful acts causing an unfair trial are upheld on appeal?

Question: What could be more public interest than guarantee of a fair trial, when a trial is a possibility in one way or another that could be personally or knowledge of another?

Question: Is there equal protection and redress and remedy on appeal when the Court of Appeals Division I has ruled in conflict to itself in a former ruling on damages for the same injury?

Question: Will Statement of the Case PART II prove that to "Affirm" the trial of errors herein, is in error and conflict to the Constitutional provision for restitution?

Question: When the Court of Appeals Division I, knows the jury foreman affidavit is given to prove the confusion of the jury, and all papers indicate that confusion submitted on appeal, why would an improper citation be used to disregard that important affidavit?

STATEMENT OF THE CASE

The length of the Statement of the case is due to the complexity of injustice, the length of the trial the length of the appeal and the span of 8½ years since the wreck.

There is a factor of being pro se trying to desegregate personal hurts into objectivity.

A Jurisdictional Statement to the United States Supreme Court is a desperate effort.

All finances to appeals are borrowed. The expense of double-xeroxing the decision of the Court of Appeals is a financial hardship.

The need for the decision opinion is imperative in the Statement of the Case to prove the inaccuracies and misunderstandings.

The Statement of the Case is in four parts: PART I is regarding facts in Chronological Summary: PART II is the errors of trial court and Decision on appeal. PART III Rehearing ROA I-50 is repealed. PART IV NEW ISSUE Original records and files were released from protection custody of the Court of Appeals Div I.

(STATEMENT OF THE CASE)

PART I:

The Chronological Summary Explanation pages 5 through 10 demonstrates the "entourage of denial" in trial court, state Appellate Court, and state Supreme Court in this case. There was a jury award in damages of $4,600. for permanent drop foot injury and permanent cervical injury. Treating Doctor Affidavit Appendix A-7:

The very Appellate Court that upheld an unfair trial and the inadequate damage award of $4,600. for drop foot injury, found $145,000. as a "sensible award" for drop foot injury in RYAN v WESTGARD 12 Wash App 500 (1975)

Deceit:

In the petitioner's trial, there was deceit, untruths, misrepresentation of fact, and suppression of fact, concealment, misleading the jury, fraud of the court, and other. All this found and proven from the record pro se AFTER trial. Reported on the appeal in assignments of error and new issues for review, briefs, etc.

Delay:

Proof from the record of fraudulant delay through a continuance in which the defense attorney states he has a conflict of trial dates, 18 days before a scheduled trial. The continuance is granted in good faith by the commissioner judge on the word of the attorney, only for this pro se to find the defense attorney in record appearing in a MOTION on that day. Appendix A-20:

Cont'd

Duty Of Trial Court To Investigate:

The trial court judge abused discretion throughout the trial in rulings because he DID NOT diligently investigate. The trial court judge abused discretion when he trusted the court's officers without question. The attorneys who had sworn to uphold the law of the land and dignity of the court - did not.

There should not ever be cause for any judge to mistrust the quasi judicial officers of the court. Yet it is the duty of the judge to diligently investigate facts BEFORE RULING.

Investigation by the judge would have uncovered wrongdoing and changed the course of injustice. As an example: The judge is shocked to find the span of time between a mistrial 1975 and the trial in the case at bar 1976. RP VOL I p 4/22-25: Alert #1:

The Court: "When was the trial?"
Attorney: "January or February '75."
The Court: (Shocked) "A year and a half ago, oh, good grief."

Alert #2: The defense attorney tells the trial judge the mistrial 1975 was caused from the refusal of plaintiff attorney to allow use of a doctor's medical report and that the doctor refused to testify, and so when a juror became ill the second day of trial, the defense attorney refused to go on with 11 jurors. RP VOL I p 5/3-11:

Duty To Investigate: (Cont'd)

Alert #3: The judge now knows of a doctor important enough to cause a mistrial. That doctor's name is mentioned 58 times the first 2 days of trial 1976, and intermittently throughout the trial.

Opening Brief p 31:

Dr. Sata's Name Mentioned:

RP VOL I p 4/16; p 5/4; p 5/10; p 5/15; p 5/16; p 11/2; p 66/1; p 66/21; p 66/22; p 66/25; p 67/6; p 67/11; p 67/14; p 68/12; p 68/17; p 68/20; p 68/25; p 69/9; p 69/23; p 69/25; p 70/5; p 70/6; p 71/8; p 71/23; p 72/1; p 73/ 13; p 73/18; p 82/19:

28 times

RP VOL II p 121/22; p 122/4; p 129/19; p 129/21; p 129/25; p 130/18; p 130/21; p 130/22; p 130/23; p 130/24; p 136/16; p 136/21; p 137/22; p 138/4; 132/8; p 132/9; p 132/17; p 132/25; p 164/15; p 133/11; p 133/15; p 158/21; p 162/1; p 164/8; p 164/20; p 164/23; p 165/1; p 165/12; p 166/5; p 166/7;

30 times

Alert #4: The trial court judge is told there is a deposition of this doctor taken by the defense attorney. RP VOL I p 11/1-4:

Cont'd

Alert #5: The medical reports of Dr. Sata, this important doctor, predated the deposition by 1 and 1½ years. THE MEDICAL REPORTS WERE USED IN THE PROCEEDINGS AND THE DEPOSITION WAS MISSING ENTIRELY.

Alert #6: Neither the defense attorney nor the plaintiff attorney called Dr. Sata to testify at the trial of 1976!

There is abuse of discretion by the trial court judge not to have investigated the six alerts. Why was there a year and a half between a mistrial and another trial? What importance does a doctor have to warrant a mistrial because his medical report was not used? Why the frequent mention of this doctor's name? Where is the deposition? What is in it? Would not the deposition be more recent for information and be a substitute testimony in case a doctor does not testify? WHY IS THE DOCTOR NOT CALLED TO TESTIFY IF HE IS THAT IMPORTANT?

The judge should have had suspicion for investigation of the "why" when he had six alerts to do so.

IF The Trial Court Judge Had Investigated:

He Would Have Found:

(a) The deposition of Dr. Sata was never transcribed.

Cont'd

Investigated
Trial Court Judge Would Have Found:

(b) Dr. Sata DID NOT refuse to testify in the 1975 trial. The defense attorney knew he did not refuse from the deposition testimony the defense attorney took himself. The trial court judge was told an untruth in court.

(c) Dr. Sata changed his medical report in the same deposition.

(d) The defense attorney used the ORIGINAL medical report in court, the medical report portrayed as bonafide and unchanged.

(e) The plaintiff attorney had a duty to speak and inform the court of deceit, and the plaintiff attorney remained s-i-l-e-n-t.

THE PROOF:

Appendix A-21 is a memo in Dr. Sata's own handwriting which, deciphered, says:

2/7/75 A. Sola called - - I don't do EMG

2/12/75 2 phone calls be court appearance - - I can't. LeMaster atty for defense Atty betts denies my deposition or letters to be introduced. I can testify right after week-end. Could today exc post holiday.

Cont'd

THE PROOF: (Cont'd)

Dr. Sata changed his medical report in the deposition. The doctor also settled therein the matter of not appearing in the 1975 trial. The memo in his files says the doctor would testify RIGHT AFTER THE WEEKEND which was still a trial day! Was a mistrial called for the purpose of delay?

Dr. Sata Deposition: p 25/23-25: p 26/1-5:

Re: Changed medical report.
Re: Not appearing in court.

Dr. Sata: " - - I am simply trying to clarify my thoughts regarding this patient. I have no axe to grind and I don't feel that I have to be held to any report that I have submitted if I don't think this is proper at this time.

One more thing, this matter of not appearing in court, this is all news to me. Could we go off the record? I want to get this settled."

Off the record.

The Vigil Absent:

There cannot be a fair trial when the attorneys are untruthful to the judge, jury and litigants. There is abuse of discretion when the trial court investigation-vigil is absent.

Web Of Deceit:

Investigation by the trial court would have prevented his "thin line" ruling in allowing medical reports 2 to 4½ years old of non-testifying doctors into the record.

This ruling involves the medical report CHANGED in a deposition and that fact concealed from the jury, court and litigants and all other doctors both plaintiff and defense.

The medical reports of non-testifying doctors PREDATED PROOF OF INJURY. The jury was not told. The judge was not told. I was not told. Petitioner did not have medical reports or depositions until AFTER trial pro se.

A web of deceit permeated the entire trial. Investigation by the trial judge would have been discovery of why any attorney would submit elderly medical reports instead of calling the doctor to testify.

The trial judge not investigating the actions and omissions in court is in conflict with his own belief on discovery of facts. RP VOL II p 92/15-18:

> The Court: Well, the purpose of discovery rules obviously is to advise people of what they are going to face. I feel very strongly about discovery rules."

Cont'd

Web Of Deceit: (Cont'd)

Yet this judge allows what he calls a "thin line" ruling making it possible for medical reports of non-testifying doctors read in court, with no cross-examination possible, and no discovery of this happening for the plaintiff to know what had to be faced.

In so ruling, and in so not-investigating the web of deceit flourished into an unfair prejudicial and jury-confused trial.

A Troubled Judge:

The trial court judge was troubled and unhappy and dissatisfied with the jury verdict. The judge sensed something was wrong but did not investigate.

RP VOL V p 471/20-25: Honorable Judge Speaking

> "Well, this is a very troubling case, and it raises the question of how - - and these cases all do - - how far a trial judge should inject himself or herself into the deliberation of a jury. Had I been the trier of fact, the Kokers would have had a SUBSTANTIALLY GREATER VERDICT."

The judge of the trial court assumed the jury was not confused and the judge did not know the extent of their confusion and he did not investigate so he did not know the deceit and untruths and wrongdoing in his own court.

A Troubled Judge: (Cont'd)

RP VOL V p 473/16-17-22-23-24:

Honorable Judge Speaking Denial Motion New Trial or Alternative Additur:

> "I believe this is a very close question, and I'm sure counsel looking at me, knows that I feel this way. I guess I have to say my jurisprudential views in this case override my personal views. I don't like the verdict, but I think that under the law, I should not superimpose my own personal views . ."

The assignment of errors and the new issues for review and the appeal, all reveal the deceit and wrongful acts in trial. The jury was so confused it took the jury foreman approximately 2 hours to CONVINCE the jurors the petitioner-victim was "not guilty." This was a personal injury, damages only trial.

The judge did not know any of this when he denied the motion for new trial or additur. He is troubled. He does not like the verdict. It is a close case, even with the deceit. Therefore WITHOUT THE DECBIT, the verdict would have been obvious to the jury and the damages they would then have awarded would have been just and fair and therefore adequate.

Jury Foreman Affidavit proving confusion of the jury and the extent of confusion. Appendix B-1

Cont'd

Honorable Judge:

It is my contention that even the judge was confused and misled by the concealed misconduct and deceit and untruths in the trial of the case at bar.

The judge had utmost trust in the attorneys of that trial which caused abuse of discretion by inattention to investigation. This judge is an honored judge and I respect him.

This judge of trial court protected me from my own attorney in the proceedings. The defense attorney asked petitioner a question regarding visual handicap problem of daughter and her difficulty getting to school.

After the accident, I could no longer drive her to school because of the dropfoot and other injuries. Her father was working 15 hours a day to financially survive the pressures of the expenses of the wreck, and her visual problem.

The daughter and her father would go on the bus system so she could learn to travel the Seattle Bus System with her handicap.

My answer came to the defense attorney's question, and my own attorney interrupted and chastised me, saying: "The question Mrs. Koker." The judge of trial court intercepted the chastisement and said: "She understood the question." RP VOL III p 329/1-4:

Priority:

At the time of petitioner's trial, the trial court Judge was in a political arena for his reelection. The report of proceedings reveal his activities in some respect.

June 10, 1976: Time: Approaching 12 noon:

RP VOL III p 288/7-11: The Court Says:

> "We're going to recess now until 2 o'clock, not 1:30. I have an obligation - a talk over at the East King County Bar Association in Bellevue, and I know that they finish at 1:30. There's no way I'm going to be back before that time, so you get a little longer lunch."

The implication being that a judge considers a luncheon talk more obligation than a trial, so how important does that make the trial?

> "Jurors are quick to observe attitude of court toward litigants and their counsel, whether favorable or unfavorable, and to be influenced thereby." Hays v Viscome 264 P 2d 173 Headnote (8) Wests Key 29(4)

The trial was in summer. The judge was not reelected in the fall.

(I voted for him.)

Repugnancy Of Injustice On Appeal:

The trial court was incognizant of the deceit and wrongdoing and unfair trial in his courtroom because the judge did not diligently investigate. Instead the judge of trial court implicitly trusted the quasi judicial officers of the court who in turn betrayed his trust.

The troubled trial court judge denied the motion for new trial or additur never knowing what had happened in his own courtroom.

The facts would still be buried if a litigant-petitioner had not become pro se, also troubled that thousands of dollars more than the inadequate verdict had been borrowed just to survive the expenses of the wreck.

The trial was over, the motion denied June 1976. Plaintiff attorney abandoned her and refused to appeal.

Trauma:

In the process of being honest to the appellate court with everything out in the open, deceit was discovered. The shock of betrayal, the disbelief, the disillusionment to discovery of wrongdoing in the trial by those you trust most - the attorneys - is a trauma in itself.

Pro se petitioner presented proof from the record to the Court of Appeals Division I. The appellate court who KNEW the trial court

(Cont'd)

Trauma: (Cont'd)

DID NOT KNOW of the confused jury and the wrong in a court of law. Instead of rectifying a wrong, the Court of Appeals Division I AFFIRMED the trial court denial of motion for new trial or additur. The appellate court denied the plea for reconsideration.

The state supreme court then denied the petition for review en banc, upholding the trial court trusting the attorneys and not investigating and allowed the rulings made on that premise. On appeal those facts should have nullified the denial of new trial and set aside the verdict of a confused jury misled by deceit with the sanctity and purpose for a jury exploited.

No extra-ordinary powers possessed by the higher state courts were ever used for justice of the case. There are conflict cases and evidence the court rules were not followed in decision on appeal.

The higher state courts in their denial of petitioner's appeal have protected the wrongdoers and condoned the wrongdoing in a court of law in a trial protected under the Constitution of the United States to be "fairly and fully heard in a meaningful way."

Is deceit in a trial fair? Meaningful? Can misrepresentation and suppression of facts and concealment present a fully heard trial?

The End:

Petitioner sent intention to file for rehearing and verification of the filing date. The answer was notification that ROA I-50 is repealed and there is no rehearing. Appendix A-7:

To remove a rehearing in appeal is to deny the last remnant of the "day in court" denying therein a constitutional right.

There were two reasons for wanting a rehearing, (1) reconsideration of the entire appeal, (2) by sheer chance, an evidence-letter was found after denial of petition for review and this letter was imperative because it would disallow any technicality to stand. This letter was evidence the petitioners did not know the contents of the doctor's deposition at the time of trial. The deceit of Error 3(a) would be a reversal.

No rehearing. Denial of due process is an emotional abyss of "nowhere to go" rejection, cast aside, discarded.

There ensued motions and denials from February 1979 until the final ruling July 20, 1979. Appendix A-8: A-9: A-10: A-11: A-12: Appendix A-12(a): A-12(b) A-13: A-13(a):

The finality Appendix A-14

The End: (Cont'd)

The ruling on Error 3(a) in petition for review was en banc. Therefore, the letter-evidence of deceit pertaining to Error 3(a) was put in motion to be heard en banc.

The clerks of the appellate and state supreme court and the commissioner of the state supreme court intercepted the letter-evidence in their rulings. The letter-evidence was denied by the judges of the appellate court, and the letter-evidence never got en banc to the state supreme court.

An appeal to the United States Supreme Court was filed August 7, 1979, with request for certification of the record on appeal.

New Issue: Release Of Original Record File:

The new issue herein is an "under color of law" release of an entire original record file of my state court appeal #4916-I.

The Court of Appeals was sent certified mail a copy of the appeal to the United States Supreme Court the day after filing.

There is also a pending civil action in superior court based with evidentiary pleadings to the Report of Proceedings Trial 1976 in the appeal original records. Petitioner borrowed nearly $1200. to have those proceedings transcribed.

New Issue: Release Of Original Record (Cont'd)

A motion of Special Accelerated Proceedings was submitted to the State Supreme Court October 1, 1979 to re-certify the original file. (Copy sent to United States Supreme Court)

The motion asks to recertify the original file and asks for sanctions and terms for the responsible.

The original file had been long-gone from the State Supreme Court - since 5 days after the final ruling July 20, 1979. This information not discovered by petitioner until September 10, 1979.

There is a memo indicating the clerk of the supreme court of the state had not protected the papers in that he did not even know they were gone from his court. Yet without looking, without checking, without investigation, that clerk told both the petitioner and the deputy clerk of the Federal District Court that the papers and files and records were in the State Supreme Court. Appendix A-16: Memo from deputy.

The entire original file was released for 46 days out of the jurisdiction and custody of the Court of Appeals Division I and the entry of the entire file release was not entered until September 10, 1979 AFTER DISCOVERY by the petitioner that the file was gone.

New Issue: Release Of Original Record (Cont'd)

In addition, the attorney-litigant who obtained the release of the files on appeal for 46 days has been an attorney for over 40 years and well knows the rules of the court in regard to original files and records.

My request as pro se, to return the entire file was answered by granting 12 days extension of time to keep the original records out of the custody of the Court of Appeals Division I.

Petitioner again asked for the return of the original record in demanding terms, voicing constitutional references and then the file was returned and is now in the state supreme court.

The ruling to re-certify the original records was asked for en banc. The clerk of the state supreme court filed the motion, then set the motion aside without further action at this time presuming the Jurisdictional Statement will not be accepted herein.

In "shelving" the Special Accelerated Proceedings Motion, the clerk of the state supreme court did not even consider the pending civil action and the report of proceedings needed in an evidentiary complaint based on the entire report of proceedings. Appendix A-23:

The clerk of the supreme court did not consider his decision is in conflict of interest because in setting aside the motion, the terms and sanctions of which he is a recipient have also been set aside in his own protection.

Way Federal Questions Were Raised And Passed:

The Federal Question #1 "fair trial" was raised in trial court in motion for new trial or in the alternative additur which is a ruling on "fair trial" under CR 59 (1)(2)(3)(4)(5)(6)(7)(8)(9) RP VOL 5. Quotations from the record under "Troubled Judge" herein.

Federal Question #1 "fair trial" was raised in appellate court by the appeal of denial of motion for new trial or in the alternative additur, and inadequate damages, plus new issues, and assignment of errors. This federal question ruled upon by the appellate court by affirming the trial court denial of motion for new trial, and also stating in decision. (PART II)

Federal Question #1 "fair trial" was ruled upon by the state supreme court in denying the petition for review en banc.

Federal Question #2 "No Rehearing". The petitioner's intention for rehearing and the verification of filing date rejected with notification rehearing ROA I-50 repealed. A-7

Federal Question #3 "original files and records on appeal released out of custody" for 46 days "under color of law" is a new issue. Motion regarding recertification filed and set aside for no action. Appendix A-23:

Federal Question #3 petitioner requests recertification again to act upon motion. Appendix A-24:

STATEMENT OF THE CASE

PART II

The Public is present in this appeal as the silent partner as to what can happen to a citizen in court and on appeal to a State Court.

PART II is the appeal to the Court of Appeals Div I, of the "trial of errors," which is the unfair trial of Federal Question I, and one subject of this appeal to the United States Supreme Court.

Discrepancies and inaccuracies of the Court Of Appeals decision goes beyond the court's interpretation of their rules.

The citation used in the decision on their page 7 refusing a Jury Foreman Affidavit, is a mistake, technicality, error in judgment,&/ or abuse of discretion. And others

The nature of this trial cannot be described. Therefore, this method of presenting the decision, the unfair trial, affirming the injustice on appeal is used.

+ The entire decision follows in consecutive order the way it was written. Proof from record of errors in the decision, follow:

(STATEMENT OF THE CASE) PART II

Appellate Court Decision: Page 1:

FILE
IN CLERKS OFFICE
COURT OF APPEALS
STATE OF WASHINGTON - DIVISION I
DATE 6/5/78
CHIEF JUDGE

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ERICH KOKER and BEATRICE E. KOKER, husband and wife,

Appellants,

v.

NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR.,

Respondents.

No. 4916-I

DIVISION ONE

FILED JUN 5 1978

Erich and Beatrice Koker, husband and wife, appeal from a jury verdict in their favor in the amount of $4,600 against Noel B. and Winetta Sage, husband and wife, and Noel B. Sage, Jr., in a personal injury action arising out of a 1971 traffic accident. The Kokers' assignments of error concern the size of the verdict, rulings on evidence, conduct of counsel, jury instruction, jury misconduct and newly discovered evidence.

Bias: Please note the above paragraph last 2 lines circled words. The deceit, untruths, and all wrongful acts of the attorneys in trial are called "conduct" by the appellate court, regarding counsel.

The confusion of the jury in the jury foreman affidavit is considered "misconduct" of the jury.

The description may be a sub-conscious protection of the legal profession.

Appellate Court Decision: Page 1:

Error I and II

The Kokers' first two assignments of error concern the jury's award of damages which they contend is grossly inadequate. The evidence is in conflict. The Kokers presented evidence of serious debilitating and painful injuries resulting in lengthy and costly medical treatment; Sage presented evidence tending to show that many of the complaints were nonexistent and much of the treatment was unnecessary.

Neither the trial judge nor the appellate court may retry the facts. The jury found, upon substantial evidence, that only some of the claimed special damages were actually and reasonably incurred. Usher v. Leach, 3 Wn. App. 344, 474 P.2d 932 (1970); Smithline v.

Error I: "Denial Of Motion For New Trial Or In The Alternative Additur"

The comparison focal point used for an award of damages is based upon the case of Ryan V Westgard 12 Wash App 500 (1975).

The Court of Appeals Division I which upheld a jury verdict of $4,600. for permanent drop foot injury and permanent cervical injury IS THE SAME COURT who stated $145,000. is a sensible award for a drop foot injury" . . in Ryan v Westgard, supra.

Treatment of permanent injuries for the purpose of relief is considered unnecessary. There is no treatment to uncripple a drop foot.

Appellate Court Decision: Page 1:

Error 2: "Weight And Preponderance Of The Evidence"

Common sense would indicate the weight and preponderance of the evidence is obviously FOR the plaintiff. See: Appendix B-7

There is testimony of permanent injuries, from two doctors who examined plaintiff and made tests proving the injuries 4½ and 5 years.

Dr. Anders E. Sola, M. D. Physiatrist. See: Appendix: B-7: and Dr. Einar Henriksen, Orthopedic Surgeon who did examination, progress checking, medical repair injuries in falls from accident leg injuries. App B-8:

Psychiatrist Dr. Arthur Freidinger examined plaintiff approximately 15 hours before trial and testified FOR plaintiff in trial. ((It is recently learned this doctor is most generally called as a defense witness.)) Appendix A-22:

The Contrast:

The medical witnesses for the defense consisted of two doctors who had each examined plaintiff once, briefly. The first doctor saw plaintiff 4½ years before the trial and never saw nor heard of her again.

The second defense medical witness saw plaintiff a short while 2 days before trial. Suchan examination arrangement is not competent evidence.

Cont'd

Appellate Court Decision: Page 1: Error 2:

"An opinion by a medical expert as to the physicial condition of an injured plaintiff and the cause of that condition based partly upon an examination for the purpose of qualifying himself as a witness and partly on the symptoms and the history of the case outlined to him by attending physician, was held to be incompetent evidence." Miller v St. Paul R. Co. 64 NW 554 (1895) 62 Minn 216

Favored By Law Plaintiff Medical:

There are three medical witnesses of note for plaintiff, who proved the injuries with extensive examinations and testing, in contrast to two medical witnesses of the defense doctors who saw plaintiff briefly once each. The appellate court has stated there is "substantial evidence" found by a jury.

"Substantial evidence" and "serious injuries" are a matter of record. The record also presents a jury so confused the jurors voted the victim of injuries "guilty."

Testimony of treating physician and specialist who has seen injured patient a number of times during the extended period of time is FAVORED over that of a physician who has seen patient only briefly in determining damages. Roberts v Tidex, Inc. 251 S 2d 510 Wests Key 571 (10)

Cont'd

Appellate Court Decision: Page 1:

Error 2: "Weight And Preponderance Evidence"

The Judge Knew:

The judge of the trial court was unsure of his ruling on denial of motion for new trial or additur. The judge felt there were inadequate damages for the injuries he heard and observed in the courtroom. The Judge said:

RP VOL V p 471/24-25: RP VOL V p 473/22-23:

"Had I been the trier of fact, the Kokers would have had a substantially greater verdict."

"I don't like the verdict - -"

Duty:

When a verdict rendered by a jury does not meet the approval of the trial court, no duty is more imperative than to set the verdict aside and grant a new trial. Nicholas v Latham 295 P 2d 631, 179 Kan 348

Not only does the trial court possess authority to grant a new trial, absent an abuse of discretion, but it rests under a duty to vacate a verdict of which it disapproves and direct that the cause be tried anew. Raines v Bendure 199 P 2d 456, Myers v Wright 208 P 2d 589, 167 Kans 728

Cont'd

Appellate Court Decision: Page 2:

4916-I/2

Error I and II

Chase, 1 Wn. App. 589, 463 P.2d 177 (1969). A new trial may be granted if the verdict does not award undisputed special damages, Kasparian v. Old Nat'l Bank, 6 Wn. App. 514, 494 P.2d 505 (1972), but that is not this case. We have no power to substitute our judgment for that of the jury when the amount of damages is disputed. Cowan v. Jensen, 79 Wn.2d 844, 490 P.2d 436 (1971).

Jury Judgment:

A jury so confused they think a victim is guilty, has no right to make a judgment that is allowed to be affirmed.

Please note there is no mention of deceit and wrongful acts, and abuse of discretion by lack of investigation by the judge and other.

The petitioner did not ask the appellate court to substitute their opinion for the jury. The appellate court was given facts and proof from the record of a deceitful, unfair trial and abuse of discretion rulings. It should have been considered a Constitutional matter of right to set aside the jury verdict under the plain error circumstances reported.

Instead, there seems to be a consistent effort to bypass justice, protect the wrongdoers, penalize the victim, and allow this unfair trial into the archives of unreported decisions forever, so that no one else will know.

Appellate Court Decision: Page 2:

Error 3

The Kokers next assign error to the trial court's rulings permitting Sage's counsel to cross-examine the Kokers' doctors by reading medical reports of nontestifying doctors in front of the jury. The Kokers' doctors had reviewed and considered these reports prior to drawing their conclusions concerning Mrs. Koker's injuries. The trial court's rulings were correct. The reports were used to accomplish the ultimate purpose of cross-examination in that they tended to cast doubt upon the witnesses' testimony. By testifying as to their opinions of Mrs. Koker's injuries, the witnesses invited inquiry into medical reports they had considered prior to drawing their conclusions. The trial court has broad discretion in permitting such cross-examination, and in the present case there was no manifest abuse of that discretion. Smith v. Seibly, 72 Wn.2d 16, 431 P.2d 719 (1967).

Error 3: Not For The "Truth Or Untruth"

The Conflict Authority case of Brown v Cocoa Cola Bottling infra, proves the appellate court decision incorrect and is abuse of discretion to uphold abuse of discretion by the trial court judge.

There is such confusion in trial from the ruling of error 3 by the trial judge, that the judge cannot tolerate it himself and excuses the jury, saying: RP VOL II p 133/3-4:

"Members of the jury, I am going to excuse you until counsel can get themselves organized."

Prejudicial impression of confusion for the jury. Please consider the merit of my opposition to the Court of Appeals Div. I decision on the grounds of abuse of discretion of not reversing this appeal.

CONFLICT #I

CASES TO SUSTAIN JURISDICTION HEREIN

Jurisdiction should be granted to the petitioner because the Court of Appeals Division I - State of Washington, is in conflict substantially with the decision of another court of appeals and the State Supreme Court in regard to proper reversal of the cause. The petition to review was denied.

Conflict Case Error 3:

Not For The "Truth Or Untruth"

The trial court judge was hesitant, reluctant, unsure, when he made what the judge called a "thin line" ruling allowing medical reports in cross examination of plaintiff doctors only "not for the truth or untruth." For defense doctors the medical reports used as "reliable."

The medical reports were 2 to 4½ years old from non-testifying doctors who did not know of the proof of injury and did not take the proof-tests themselves but had only examined the petitioner superficially.

One plaintiff doctor's report was a letter to my attorney September 1974 and February 1975. The "thin line" ruling was objected to by plaintiff attorney on the grounds of hearsay and work progress.
RP VOL I p 66/1-6: p 68/11-25: p 69/1-20: p 69/21-25: p 70/1-4: Running Objection p72/3-7:

Objection overruled.

Cont'd

Conflict Case Error 3: (Cont'd)
Not For The "Truth Or Untruth"

The appellate court decision says the reports of non-testifying doctors were used for cross-examination purposes of the treating doctor to cast doubt upon the doctors testimony.

The medical reports should not have been allowed "not for the truth or untruth" because contradiction of testimony involves the credibility and such contradiction for that purpose would have to be offered for the TRUTH and then cross-examination of the doctor who made the report, in court.

There is a case so proving this from the State of Washington Supreme Court. This case pertains to Evidence-Hearsay-Writing-On Cross-examination. BROWN V COCOA COLA BOTTLING 54 Wn 2d 665: 344 P 2d 207 (1959) Quoting:

"In such an action, the trial court correctly rejected a written report made by the plaintiff's physician to one of plaintiff attorneys concerning a physical examination of the plaintiff for the purpose of contradicting testimony . . "

". . since the contradiction of this testimony involved the credibility of the physician and any such contradiction would have to be offered for the truth of the facts asserted therein, and therefore, came within the ban of the hearsay rule."

This authority to prove the ruling is abuse of discretion, was completely ignored on appeal.

Appellate Court Decision: Page 2:

Error 3: Not For The "Truth Or Untruth"

|| Citation || CONSTITUTION OF THE UNITED STATES AMENDMENT 14 Note 1036 p 793

"A ruling based on evidence which a party has not been allowed to confront or rebut is one which denies due process." Carter v Morehouse Parish School Bd. C. A. La (1971) 441 F 2d 380, Cert Denied 92 S. Ct. 201, 404 U. S. 880. 30 L Ed 2d 161:

|| Citation || CONSTITUTION OF THE UNITED STATES ANNOTATED AMENDMENT 14 Note 603 p 454 Due Process Of Law

"While judges have authority to maintain decorum in their courts including regulation of professional conduct of attorneys, such authority must be exercised pursuant to, and is necessarily circumscribed by, procedural safeguard, contained in this clause and equal protection clause of this amendment." Weintraub v Adair D. C. Fla 1971 331 F Supp 448

|| Citation || 14 FPD 2d 621 Wests Key 314 CONSTITUTIONAL LAW

"Right to confront and cross-examine witnesses is fundamental aspect of procedural due process." Jenkins v McKeithen, 89 S. Ct. 1843, 395 U. S. 411, 23 L Ed 2d 404, Rehearing Denied 90 S. Ct 35, 396 U. S. 869, 24 L Ed 2d 123 (1969)

Appellate Court Decision: Page 2 Page 3:

Error 3(A)

The Kokers' next assignment of error concerns a deposition of Dr. Sata which had not been transcribed prior to trial. They contend that it is newly discovered evidence withheld by the defense which contradicts Dr. Sata's medical report and entitles them to a new trial. The deposition, however, was taken on August 20, 1975 and the trial began June 10, 1976. The Kokers' counsel was present at and participated in the deposition and evidently chose not to transcribe it. To be "newly discovered," the evidence must be discovered after trial. Nelson v. Mueller, 85 Wn.2d 234, 533 P.2d 383 (1975). There is no evidence to support the Kokers' contention that the deposition was not discovered until the trial had ended.

Error 3(A): "Newly Discovered Evidence"

The decision of the appellate court above, skirts the issues in obscurities. This error is deceit in a court of law and not a "contradiction." Deceit in Error 3(A) is wrongdoing under the Constitution creating an unfair trial, and the appellate court is upholding that which is adverse to the rights of a citizen.

To have a doctor change a medical report in a deposition and then the defense attorney reads the original medical report to the jury in court portrayed as bonafide, is pure and simple "deceit", not contradiction.

Appellate Court Decision: Page 2: Page 3:

There is inaccuracy in the appellate court decision which changes the concept of the "newly discovered evidence."

This petitioner made it clear the "newly discovered evidence" is the proof of deceit in a trial. The deposition is the "vessel of proof" only. ERROR WAS EXPLAINED FULLY!

Quoting: Appellant's Opening Brief: p 38:

"Newly discovered evidence is that evidence which was withheld by the defense."

"The defense counsel is the reason for the newly discovered evidence."

Quoting: Assignment Of Error 3(A)
Appellant's Opening Brief p 3:

"Newly discovered evidence is that the medical report of Dr. Sata is changed in deposition but withheld from the jury."

Quoting: Appellant's Reply Brief: p 19:

"Newly discovered evidence is finding out about the improper conduct."

Quoting: Appellant's Reply Brief: p 19

"To read a medical report into the record five times under the guise it is bona-fide, is deceit."

Appellate Court Decision: Page 2: Page 3:

Presentation of Error 3(A) was clearly stated to the appellate court but they have misunderstood.

Quoting: Motion For Consideration: P 17:

"The newly discovered evidence is NOT the deposition itself as such, but is the proof of wrongdoing by quasi judicial officers of the court CONTAINED IN THE DEPOSITION. Before the trial, that proof was not wrongdoing because the act of wrong had not been committed."

"There is no way to discover new evidence before trial because this "newly discovered evidence" happened at trial, in trial, during trial."

"The defense attorney read an original medical report of Dr. Sata as bonafide when he knew the report had been changed in deposition. Plaintiff attorney knew, objected, was overruled and remained silent when he had a duty to speak."

"Civ Code 1710, Subd 3, says the suppression of a fact by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact, is a "deceit."

Appellate Court Decision: Page 2: Page 3:

The Petition For Review was met with rebuff and denial. Petitioner said p 12:

"Presentation by pro se must have presented a communication barrier. The deposition itself as such, is not the newly discovered evidence. The deposition is only the "vessel of proof" of deceit and fraudulant conduct, misrepresentation of fact, suppression of fact, misleading the jury, withheld evidence. The wrong-doing happened in trial, at trial, during trial so how could this new evidence be discovered BEFORE trial?"

[Citation]

"Fraudulant concealment" is the intentional nondisclosure of material facts by one owing a duty to disclose." Allen v Layton 235 A 2d 261 (1) (1967) Fraud Wests Key 17: 23 Am Jur Fraud and Deceit §578 p 854

Appellate Court Decision: Page 2: Page 3:

Quoting: Motion For Reconsideration: P 17:

"If counsel chooses not to recognize integrity rules of his profession, the client should not be penalized." Ryan v Ryan 48 Wash 2d 593, 295 P 2d 1111 (1956) RCW TITLE 4 Civ Proc 4.76.20 (17)

Quoting: I ask you to reconsider new issue for review II not mentioned in your decision." P 17

New Issue II:

The defense attorney was untruthful to the jury saying the ear specialist found the fullness-feeling in the ear of plaintiff to be caused from a staph infection. Not true and the defense attorney knew it.

The ear specialist testified in a deposition that the "feeling of fullness" in the ear was from accident injuries. The doctor testified in deposition his medical report referred to "hearing" not to the feeling of fullness. The defense attorney called this deposition.

In the trial, Beatrice Koker testified truthfully that this fullness feeling is present to this day and the ear must be cleared similar to the feeling of height when going over the mountains.

Appellate Court Decision: Page 2: Page 3:

Who is the jury going to believe? An attorney publicly declared honest, protective, on oath or a middle aged woman depicted by the defense attorney as a mental-status-alien?

Irrelevant:

The fact whether the plaintiff attorney chose to transcribe Dr. Sata deposition or not is completely irrelevant to the issue of the defense attorney. The plaintiff attorney kept silent when the defense attorney was deceitful in a court of law. The transcribed deposition would have had no bearing whatsoever as the plaintiff attorney had a duty to speak and disclose the deceit and this he did not and would not do with or without the deposition transcribed.

Difference:

The appellate court considers the deposition itself as the intended newly discovered evidence when that is not so. The newly discovered evidence is the CONTENTS CORRELATED TO THE REPORT OF PROCEEDINGS thus the proof of deceit.

"Discovery of Deceit" is the newly discovered evidence. The location of the discovery is not the issue.

Appellate Court Decision: Page 3:

The Kokers make several assignments of error concerning the conduct of defense counsel. They include: (1) (4) extraction of promises from jurors during voir dire and requests during final argument that they keep their promises to him:

> I, and my clients take that as a serious solemn promise that is being called in, so to speak, at this time.

(7) (2) the statement during closing argument that counsel thinks a 9(C) defense expert witness is commendable and extremely thorough; (3) the testimony of this same defense expert witness describing Mrs. Koker as an appealing woman and the closing argument of defense counsel alluding to this testimony; (4) (13) misstatement of testimony and casting aspersions on Mrs. Koker and her witnesses during final argument; 9(a) (5) an objection by defense counsel which improperly implied that one of the Kokers' lay witnesses could not recall events 5 years ago (the witness explained her difficulty as being due to how bad it made her feel to describe Mrs. Koker's injuries); and (6) 9(B) numerous insinuating questions by defense counsel which implied that Mrs. Koker had a peculiar mental state.

At the trial, no objection was raised as to any of this conduct. Objections at trial would have enabled the court to correct any improper conduct by instructing the jury to disregard it. We will review matters not raised at trial only if the conduct is so flagrant that no action by the trial court could have removed its prejudicial impact. Strandberg v. Northern Pac. Ry., 59 Wn.2d 259, 367 P.2d 137 (1961). There is no such flagrant conduct in the record.

Identification: Inserted numbers in ink are the error number.

(1) Error 4: (2) Error 7: (3) Error 9(C):

(4) Error 13: (5) Error 9(A)(6) Error 9(B):

Appellate Court Decision: Page 3:

Objections waived below affecting right by law can be noticed on appeal. Cumulative errors may not stand alone for reversal but together may. State v Badda 63 Wn 2d 176, 385 P 2d 859 (1963)

Error 4: "Improper Voir Dire"

The defense attorney extracted personal promises from the jury, having the effect of a "psychological laser beam", a bond to one attorney. RP VOL IV p 457/23-24-25: Quoting:

> "Now, I realize that, I asked you for some difficult promises at the outset of this case, but that is my job and it is your job. It is your job to live up to those promises."

No objections. No judicial notice. The subject matter of the promises is not the issue; the issue being "promises" to an attorney are prejudicial in bondship instead of impartiality. The jury had an oath to keep, not promises.

Error 7: "Vouching For Credibility"

A lawyer is not to assert his personal opinion as to the justness of a cause, or to the credibility of a witness. DR 7-106. RP VOL IV p 449/2-8: Defense Attorney says:

> ". . the manner in which he approaches a case, I THINK is very commendable."
> "He is extremely thorough."

Appellate Court Decision: Page 3:

Error 9(C): "Appealing Woman"

An expert witness purporting to have special training, education, experience, knowledge and ability testified in this manner: RP VOL III p 288/20-21:

> "A physical and neurological examination reveals what I felt a rather appealing woman."

There is a xeroxed picture Appendix B-9 which will show you the defense plan to assure the jury the doctor 2-days-before-trial had no animosity toward the plaintiff.

Correlation in closing argument by the defense attorney proves such a plan. RP VOL IV p 448/22-25: p 449/1-2: The defense attorney says:

> "It is important how the physician feels about a patient. He told you, I believe, that she was an attractive individual to him, that he did not dislike her, anything like that."

The memory of the medical examination by that doctor is one of rudeness. No man, doctor or not a doctor, would treat a lady rudely if he found her "appealing."

Appellate Court Decision: Page 3

Error 13: "Closing Argument - Defense"

The defense attorney cast aspersions on the plaintiff treating doctor who is nationally and internationally known, and the plaintiff attorney helped the defense attorney.

The orthopedic surgeon, Dr. Einar Henriksen, testified: RP VOL IV p 377/6-7-8:

> "I did not prescribe any change in her treatment. I just advised that she continue on her present routine of treatment with Dr. Sola."(Treating Dr)

Dr. Henriksen has been an orthopedic surgeon since 1950 and examinations for plaintiff over a period of 4½ years before trial.

Plaintiff attorney in closing argument aiding and abetting the defense attorney: RP VOL IV p 460/13-23:

> "He(defense attorney) says Dr. Sola has mismanaged this whole thing. Well, it is not our fault, ladies and gentlemen, if a doctor has mismanaged it, if our client in this case, Mrs. Koker, was being controlled by the doctor. In other words, he was directing the treatment and she was getting relief from what he was doing. Now, if he was doing it wrong that is not our fault. We were forced to go for treat-

Appellate Court Decision: Page 3: Error 13: (Cont'd)

> ment and this is what we received. Now, maybe they didn't like the doctors that we were using but that is not our responsibility, ladies and gentlemen. We are not liable for that."

It is interesting to note the treating doctor's deposition held questions and answers to key proof of injury that was never asked in court!

The deposition was not opened and published.

The affidavits B-2 B-3 B-4 B-5 in the Appendix were not solicited; those making the sworn affidavit testimony came to me with this information.

Error 9(A): "Visual" not "Memory"

The subject matter of a "before" and "after" walk of a crippled drop foot injury is not a matter of memory, but is a visual description.

A lay witness had difficulty to speak of the contrast difference as the comparison brought tears. She was a close friend and knew the difference well.

The defense attorney cast aspersions on her memory and his objection was overruled but the memory-seed was planted prejudicially and no clarification that memory was not even involved. "Visual" Not "Memory."

Appellate Court Decision: Page 3:

Error 9(B): "Insinuating Questions"

Questions that had no bearing on the accident or injuries and were not relevant to the issues were asked by the defense attorney.

Imagine the prejudicial reaction of a jury to hear this question: RP VOL II p 209/19-20: "Does Mrs. Koker take doorknobs and doorhandles off the doors?"

A very ordinary household happening in need of repair occurred. The ancient 1919 front door lock assembly became separated from the inside and the shaft and knob had to be inserted to open the door. Before a family decision could be made whether to replace the entire door or fix the door and get a new lock system, the wreck happened and there was no money for anything.

My attorney knew of this whole situation as he had been to this house. BUT THE DEFENSE ATTORNEY WOULD HAVE NO WAY OF KNOWING FROM SEEING THE SITUATION.

To use this method of undermining the intelligence and mentality of the plaintiff is a ruse of the lowest form and disgrace. Plaintiff attorney made no objection, no explanation, no clarification but just let the jury think the worst of his own client.

Appellate Court Decision: Page 4:

4916-I/4

Error 5

Next, the Kokers assign error to the admission of testimony about letters Mrs. Koker wrote to her doctor and the display of those letters before the jury without their being admitted into evidence. The letters were considered by Mrs. Koker's doctor before he drew his conclusions and thus were relevant. See Smith v. Seibly, supra. Moreover, no objection was made at the trial, and the question may not be reviewed on appeal.

Error 5: "The Letters"

Honorable Justice Warren said:

> "Curiosity of the jurors may be aroused by unusual circumstances such as extended legal argument, hearing in the absence of the jury, of the removal of evidence that consumed considerable time at the trial. Failure to explain such circumstances to the jury is mentioned by Justice Warren as a factor in contributing to prejudice."
> Burgett v Texas 389 U.S. 109 (1967)

Again, the appellate court has misunderstood the presentation of the issues. The Opening Brief makes it clear that the prejudice is LEAVING THOSE LETTERS IN THE VIEW OF THE JURY FOR HOURS, THEN THE LETTERS DISAPPEAR DURING THE LUNCH HOURS AND ARE NEVER SEEN AGAIN, AND NO EXPLANATION TO THE JURY.

Error 5

Appellate Court Decision: Page 4:

The Judge, calling attention prejudicially to the letters in a 8½ x 11 manilla envelope in full view of the jury said: RP VOL II p 147/16-17:

> ". . going to want to inquire of the doctor - - she has a pile of letters there - -"

Jurors are quick to observe attitude of the court toward litigants and their counsel, whether favorable or unfavorable, and to be influenced thereby. Hays v Viscome 264 P 2d 173 Headnote (8) Wests Key 29(4)

The jury heard 9 pages of testimony in the proceedings about the letters plaintiff wrote to her treating doctor. The doctor testified the writing of letters was petitioner's way to cope with injuries.

The petitioner, to waylay self pity from forced physicial idleness, to count for something, to be useful, helpful, did the only other thing she knew to do - - write. There is a diploma from the Newspaper Institute of America. Appendix B-10:

> The letters contained stories, memories, and there is material from those letters printed in a national magazine. Two original crochet designs for ski caps were sold to a national needlework magazine, especially created for handicapped people to do.

Appellate Court Decision: Page 4:

Error 6

> The Kokers next assign error to the admission into evidence of what they term "gibberish notes." These notes were a list of Mrs. Koker's injuries which she prepared prior to her deposition. The portion of the deposition in which she mentioned the list was read to the jury to show those injuries she claimed at her deposition which were not being asserted at trial. The list was admitted at trial because it tended to prove the defense claim that Mrs. Koker had difficulty sorting out her real injuries from imaginary ones. Any evidence which reasonably tends to establish the theory of the party offering it is admissible unless it has too great a tendency to mislead, distract, waste time, confuse or impede the trial. Rothman v. North American Life & Cas. Co., 7 Wn. App. 453, 500 P.2d 1288 (1972).

Error 6: "Gibberish Notes"

Naive Petitioner obeyed her trusted attorney when he asked for a list regarding injuries to be jotted down for the deposition the following day.

The defense attorney confiscated the list as an exhibit to the deposition. The list was introduced as Ex 20 in the trial. The defense attorney read 25% explanation of the list from the Plaintiff's deposition, and 75% of the "gibberish notes" went unexplained. "Gibberish" because that list was a memo to myself and no one else would understand them.

The jury received the "gibberish notes" without the deposition to explain. That is like receiving an index without the book.

Appellate Court Decision: Page 4: Error 6:

The work product of an attorney in a list from his client became Exhibit 20, the prejudicial "gibberish notes" in a court of law.

UNITED STATES SUPREME COURT

Honorable Justice Stone Court Files Printed:

Justice Stone of the United States Supreme Court had his papers in the files, consisting of correspondence, memoranda, private and confidential communications, notes exchanged with colleagues and preliminary drafts of court opinions prepared by Justice Stone and other Justices, living and dead, taken charge of and disposed of by others after Justice Stone passed away.

Someone exploited the opportunity to the fullest and produced a biography replete with the disclosed intimacies and revealed confidences. The book's jacket states a claim that "A notable feature of the work is the unprecedented use of personal comments which the justices scribbled on the draft opinions that were circulated among them and later preserved in Justice Stone's files. This information is from: Edmond Cahn Reader p 260 Eavesdropping on Justice.

Appellate Court Decision: Page 4: Error 6:

The injustice of the confiscation of private papers of the United States Supreme Court has a devious purpose in my opinion.

The exploitation of petitioner's personal memorandum list, a work product, has the purpose of the mental thrust attack by the defense attorney. The defense attorney did not give "mental status" or any other reason.

The defense attorney depicted me, and was allowed to, as "far out" mentally peculiar" "off the deep end and in court on her imagination." The defense attorney is low on medical and his only chance was to confuse the jury and attack the mental status of the plaintiff.

The complaint for the trial does not justify the approach and attack by the defense attorney. Appendix B-11 (a) (b)

Any accident victim will have the aftermath and repercussions and mental anguish and heartache, existing in a ruined way of life, shackled to injuries and no escape.

I am a woman who had a pattern of hard work for 40 years that was suddenly intercepted. Slowness might not be a cross to bear to someone who is slow of nature. But to me, a person who has not spent a lazy day in her life, this crippled condition is a prison.

Appellate Court Decision: Page 4:

Error 8

The Kokers next assign error to the presentation of defense testimony in the middle of their case in chief. This contention has no merit, because the Kokers' counsel agreed to the procedure at trial. The trial judge has broad discretion to admit evidence out of its natural order. Seal v. Long, 112 Wash. 370, 192 P. 896 (1920). There was no abuse of discretion.

Error 8: "Out of Order"

The Trial Court Judge told the jury that because of the various schedules of the defense doctors, those doctors would be called "out of order."

RP VOL III p 223/11-14: The Trial Judge

> "We're really out of order this morning, because you'll remember that we're still in the case that the plaintiff is presenting."

This "out of order" would not have been deemed so much of an error if the trial had been calm, unbiased, unprejudicial and fair. But because of the nature of the deceitful trial and the confusion of the proceedings, to further change the presentation of the testimony is confusion to the jury.

The appellate court found this error to be without merit. There was no consideration of the fact the defense attorney called a mistrial because a plaintiff doctor could not appear in the 1975 trial when called. In 1976 the defense attorney accomodated his own medical witnesses in "out of order."

Appellate Court Decision: Page 4: Page 5:

Error 9(D)

The Kokers next assign error to the overall effect of the rulings of the trial court. The Kokers contend that they did not receive a fair trial, because the court was partial to the defense. We have examined the instances cited by the Kokers and have carefully reviewed the entire record. The Kokers received a fair trial; the trial judge was not biased for or against either party. Cowan v. Jensen, supra.

Error 9(D): "Not Disinterested"

The appellate court has examined the entire record and found a fair trial to consist of deceit in a court of law, an instruction that changed the theory of the case, rulings in conflict to precedent cases, and all other.

The judge allowed the defense attorney to read from 2 medical reports then denied the plaintiff attorney to do the same. Proven: RP VOL II p 133/14-15-16: The Court Says:

> "I am going to let Mr. LeMaster examine him (Dr. Freidinger) from those two medical reports of Dr. Sata regardless of whether or not the doctor remembers having had them at the time."

The plaintiff attorney referred to the reports, and the objection came from the defense attorney to not allow the plaintiff attorney access to one of the medical reports. The court sustained the objection saying:

Error 9(D)

Appellate Court Decision: Page 4: Page 5:
RP VOL II p 164/18-25:

"The court remembers a great deal of confusion and it wasn't clear which reports the doctor had read."

"Objection sustained. I won't let you go into that report."

There again is the double standard. The defense attorney reads two reports regardless of whether or not the doctor remembered having had the report. But the plaintiff attorney is denied. The plaintiff doctors in Error 3 had medical reports "not for the truth or untruth" while the same medical reports for the defense were "reliable."

"The Trap" is in RP VOL III p 304/8-14:

The plaintiff attorney objected on repetition. The judge says, "Fine if you have an objection on repetition." The plaintiff attorney restates he is objecting on repetition. The court answers: "Overruled."

An objection is sustained without the grounds being stated. RP VOL I p 82/18-25: p 83/1-4:

Defense attorney: "I - -

The Court: "Sustained."

The appeal stated Beatrice Koker did not get a fair trial because there is deceit and wrongdoing in the trial, and a Judge who has abuse of discretion not investigating before ruling. And Other.

Appellate Court Decision: Page 5: Page 6:
Error 10: "Before" And "After" Witness Denied:

Error 10

The Kokers next assign error to the refusal of the trial court to allow a recently discovered lay witness to testify to the changes in Mrs. Koker's health and activity level after the accident. The trial court ruling was based upon the cumulative nature of the testimony. Two other lay witnesses testified to the same changes.

A witness discovered shortly before trial may be allowed to testify unless the party calling the witness deliberately withholds the person's name. Barci v. Intalco Aluminum Corp., 11 Wn. App. 342, 522 P.2d 1159 (1974). There is precedent that it might be an abuse of discretion to refuse to allow the somewhat cumulative testimony of a witness without giving the parties prior notice of a rule limiting witnesses. Mogelberg v. Calhoun, 94 Wash. 662, 163 P. 29 (1917). However, in contrast to the offer of proof in Mogelberg, the Kokers stated no facts which would distinguish the proposed testimony from that already given. The offer of proof in its entirety was:

> My offer of proof in this case would be that this lady is Mrs. Conley. The first time I ever talked to her, saw her, knew anything about her as to what she might say or had anything to do with it, was on the evening of the 9th. I went out to her home. I went out there the day before. She was in Aberdeen. She would testify that she knows the plaintiff, that she has visited her home, that she has seen the difference between her present physical condition and that which was apparent and which she knew about before the accident, and that she would further describe her differences in activity. That is generally the subject matter.

Because the offer adds nothing to the evidence already received, its exclusion was not prejudicial. Sutton v. Mathews, 41 Wn.2d 64, 247 P.2d 556 (1952). We cannot consider a more detailed offer of proof for the first time on appeal. Cochran v. Harrison Memorial Hosp., 42 Wn.2d 264, 254 P.2d 752 (1953).

CONFLICT #II

CASES TO SUSTAIN JURISDICTION HEREIN

Conflict Case Error 10:
"Before" And "After" Witness Denied

The nature and effect of nerve injuries is subjective and needs lay witnesses. A "before" and "after" lay witness was denied the plaintiff in trial and there was no advance notice of limitations of lay witnesses by the judge.

The Appellate Court allowed that this error could be abuse of discretion, but that the offer of proof by petitioner's attorney was not adequate. Limitations of witnesses was held improper in VARCI v INTALCO Aluminum 11 Wash App 350, 552 P 2d 1159 (1974) and DUFFY v GRIFFITH 4 A 2d 170 (1939)

There is a case in conflict with the ruling of the appellate court that the offer of proof is not adequate: KUBISTA v ROMAINE 14 Wn App 58, 538 P 2d 812 (1975) Washington Supreme Court Division II.

Summary Of Conflict Case:

In the case of Kubista v Romaine supra, the action is for personal injury and the jury judgment is $25,000. for lower back injury. The main contention by the plaintiff there in appeal is inadequate damages are the result of erroneous ruling the witness should have testified and the "offer of proof" was adequate.

(Cont'd)

Conflict Case Error 10: (Cont'd)
"Before" and "After" Witness Denied

Summary: (Cont'd)

In KUBISTA v ROMAINE supra, the judge said it was prejudicial not to accept the offer of proof whose requiste need only make clear to trial court what evidence is offered, contains the reasons relied upon for admitting evidence, enables trial court to make an informed ruling. That case was reversed.

#

In the case at bar, the appellate court should have ruled the offer of proof adequate, and allowed reversal of the case.

A formal offer of proof is not even an absolute requiste to enable presentment if that error affects the substantial rights of the parties. In the case of this petitioner, my rights to a constitutional privilege to present testimony which supports my theory of the case was denied. HARRIS v SMITH 372 F 2d 803 (1967): JOHNSEN v JOHNSEN 78 Wn 423, 139 P 189 (1914)

In SNOWHILL v LIBRUANCE 435 P 2d 624 (1967) 20 witnesses were heard by a jury in a personal injury case. I had 2 witnesses and the third denied without advance notice of limitation.

In MOGELBURG v CALHOUN 94 Wn 662, 163 P 29 (1917) there was abuse of discretion found to limit the number of eyewitnesses to 6 or 8 after five had testified viewing accident.

Appellate Court Decision: Page 6:

Error 11

> The Kokers next assign error to the use of exhibit No. 1, Mrs. Koker's doctor's bill, which they contend was not given to the jury. Evidently, their claim is based on the index to exhibits in the verbatim report of proceedings. The index does not note whether the bill was admitted into evidence. However, the exhibit itself is stamped "FILED" and "ENT'D," and the record shows that the amount of the bill was argued to the jury. It is apparent that the doctor's bill was admitted into evidence and considered by the jury.

Error 11: "$2,839. Forgotten"

The medical expense of $2,839. medical expense for the treating doctor was introduced and identified in trial as Exhibit 1.

The defense attorney asked that it be NOT ADMITTED until after his cross-examination. The judge and both attorneys agreed.

Defense cross-examination came and went. Redirect was finished. Recross was through, and Exhibit 1 was NEVER ADMITTED.
Identified: RP VOL I p 49/15-21:

The appellate court says as long as the Exhibit 1 was stamped "filed and ent'd" and the amount of the bill argued to the jury, that makes the exhibit admitted. The law says differently:

> "The tramscript of the trial controls over the docket entries." West's General Digest 4th Series Volume 30 p 59 Appeal and Error West's Key 664 (1) Crow v Housworth 313 A 2d 523 (1974)

Appellate Court Decision: Page 6:

Error 12

> The Kokers' next assignment of error concerns the jury instruction on the measurement of damages. The Kokers' counsel did not object to the instructions; objection concerning jury instructions cannot be raised for the first time on appeal. Hamilton v. State Farm Ins. Co., 83 Wn.2d 787, 523 P.2d 193 (1974).

Error 12: "Instruction 6: Damages:"

The jury instruction is a pattern instruction and the error 12 changed the theory of the case, from admitted liability to liability.

The instruction is a Washington Pattern Jury Instruction WPI 30.01, in which there is to be phrases deleted if the case is admitted liability. This was not done.

Both attorneys, plaintiff and defense, submitted the identical erroneous pattern instruction.

The Court of Appeals division I has refused "plain error" saying objection to instruction cannot be raised for the first time on appeal.

The authorities differ, thus making the appellate court decision abuse of discretion.

> The plain error rule is to apply to obvious circumstances of injustice. Irving v Bullock 549 P 2d 1185 (1976)

Changing the theory of the case is obvious. No remedy or redress for the obvious is injustice.

Appellate Court Decision: Page 6: Error 12:

The prejudicial effect of an erroneous formula instruction is confirmed in Mills v Park 67 Wn 2d 71, 409 P 2d 606 (1966) and Sage v Northern Pac R Co 62 Wn 2d 6, 380 P 2d 856 (1963): Donner v Donner 46 Wn 2d 130, 278 P 2d 780 (1955)

Prejudice from an erroneous instruction is presumed unless the contrary affirmative appears. There is prejudice, when the theory of a cause is changed. 2A Wash D-25 Inst. 1031.6

Jury instruction objection cannot be lumped into one category in circumstances such as the case at bar.

Plaintiff's attorney even forgot his set of the instructions at his office. RP VOL IV p 415/14-15-16:

A miscarriage of justice occurred in the instruction Error 12 because:

(a) Attorneys committed the act.
(b) The trial Judge did not notice.
(c) The appellate court will not recognize.

Objection can be raised for the first time on appeal if there is an obstruction to justice and miscarriage of justice. An instruction changing the theory of the case, is both. Shokuman Shimaukuro v Nagayama 140 F 2d 99 (1965)(5) Harris v Smith 372 F 2d 806(14) (1967)

Appellate Court Decision: Page 6:

Error 12: "Instruction 6: Damages:"

|| Citation || WASHINGTON PRACTICE - ORLAND Error In Law At Trial CR 59 p 96 (7)

"When record discloses an error in an instruction given on behalf of the party in whose favor the verdict was returned, the error is presumed to be prejudical, and requies a new trial unless it affirmatively appears that the error was harmless." Zwink v Burlington Northern, Inc. (1975) 13 Wash App 560, 536 P 2d 13

|| Citation || "If facts are submitted to and tried by a jury in state court, the Seventh Amendment to the Constitution, providing that "no fact tried by a jury shall be otherwise re-examined in any Court of the United States than accordin to the rules of the common law", prevents the SUPREME COURT from retrying the facts.

BUT LEGAL QUESTIONS CONCERNING THE COMPETENCY AND LEGAL EFFECT OR SUFFICIENCY OF THE EVIDENCE, OR THE THEORY UPON WHICH THE CASE WAS SUBMITTED TO THE JURY, ARE OPEN TO THE COURT."

|| Citation || Irving v Bullock 549 P 2d 1185 Headnote (5) Appeal and Error West Key 215 (1)

"There must be plain error before court will review propriety of giving instructions."

Appellate Court Decision: Page 6: Error 12:

|| Citation ||

"The Supreme Court of the State of Washington holds consistently that it is prejudical error to give irreconcilable instructions upon a material issue in the case. Where instructions are inconsistent or contradictory or on a given material point, their use is prejudicial, for the reason that it is impossible to know what effect they may have on the verdict." Smith v Rodene 69 Wn 2d 482, 418 P 2d 741 (1966): Matteson v Thiel 162 Wash 193, 298 P 333 (1931): Babcock v M & M Const. Co. 127 Wash 303, 220 P 803 (1923):

|| Citation ||

"The appeal is related to denial of substantial rights of the plaintiff and prejudice is clearly within the range of not only possibility but probability, and established fact. If the error is related to the substantial rights of the plaintiff and prejudice is clearly within the range of possibility, a demonstration of prejudice is not required."
Snyder v Lehigh Valley R. R. 245 F 2d 112, 115: (1957):

|| Citation || "In the absence of timely objection does not necessarily preclude the consideration of error which may have resulted in a miscarriage of justice."
Pritchard v Liggett & Myers Tobacco Co. 350 F 2d 479, 480: 382 U. S. 987, 86 S. Ct. 549, 15 L Ed 2d 475 Cert Denied

Appellate Court Decision: Page 6: Error 12:

|| Citation || "The Supreme Court of the State of Washington holds consistently that it is prejudical error to give irreconcilable instructions upon a material issue in the case. Where instructions are inconsistent or contradictory or on a given material point, their use is prejudicial, for the reason that it is impossible to know what effect they may have on the verdict." Smith v Rodene 69 Wn 2d 482, 418 P 2d 741 (1966) Matteson v Thiel 162 Wash 193, 298 P 333 (1931): Babcock v M. M. Const. 127 Wash 303, 220 P 803 (1923)

|| Citation ||

"The appeal is related to denial of substantial rights of the plaintiff and prejudice is clearly within the range of not only possibility but probability, and established fact. If the error is related to the substantial rights of the plaintiff and prejudice is clearly within the range of possibility, a demonstration of prejudice is not required." Snyder v Lehigh Valley R.R. 245 F 2d 112, 115: (1957)

|| Citation || "In absence of timely objection does not necessarily preclude the consideration of error which may have resulted in a miscarriage of justice."
Pritchard v Liggett & Myers Tobacco Co. 350 F 2d 479, 480: 382 U. S. 987, 86 S. Ct. 549, 15 L Ed 2d 475 Cert Denied

Citation || HANDBOOK OF THE LAW OF
§107 FEDERAL COURTS CH 12 p 490

"The Court first recognized the adequate state ground rule but drew a distinction between state substantive grounds and state procedural grounds, and declared it to be settled that "a litigant's procedural defaults in state proceedings do not prevent vindication of his federal rights unless the State's insistence on compliance with its procedural rule serves a legitimate state interest.

This indicates that the Court could review the case if it found that the state rule served no legitimate state interest. Thus, to enforce the contemporaneous objection rule would be to force resort to an arid ritual rather than to serve s substantial interest."

A pattern instruction erroneously submitted by both the defense attorney and the plaintiff attorney changed the theory of the case.

The appellate court observed the "no objection in lower court precludes consideration on appeal" rule. Cumulative Errors.

That decision-attitude discarded circumstances that warranted use of the judiciary tools to justice, the RAP Rule 1.2 infra, and the "Plain Error Rule" and others, to a court porported to be a subsidiary of the Constitution of the United States to see there is justice for all.

Appellate Court Decision: Page 6:

> The Kokers have moved to raise another issue on appeal concerning the failure to instruct the jury on damages for the aggravation of a dormant, preexisting condition. The instruction was initially proposed by the Kokers' counsel, but abandoned because he believed that there was no evidence to support it. This decision precludes raising the issue on appeal. Hunt v. King County, 4 Wn. App. 14, 481 P.2d 593 (1971).

A pro se person must first find the law and authority before recognizing a circumstance as error. May 18, 1977 Rule 12.1 Basis For Decision regarding the proven spondylosis omitted, was filed with the Court of Appeals Division I. The decision was not made by the appellate court until June 5, 1978. Rule 12.1 and aggravation of spondylosis omitted from the instructions was mentioned in oral argument February 22, 1978.

The judge is surprised when the aggravation instruction is withdrawn by plaintiff attorney.

RP VOL IV p 422/10-16:

Defense Attorney: "Well, there has been no testimony with respect to aggravation."

Plaintiff Attorney: "I will agree to pull that out."

THE COURT: "You agree to pull it out? Okay, that takes care of that one."

The surprise of the Trial Court Judge is an "alert" which he disregarded in abuse of discretion not investigating withdrawl of an instruction for a bonafide injury.

There is testimony in trial RP VOL I p 45/24-25: RP VOL I p 46/1-4: and 12-22: There was sufficient evidence to warrant an instruction.

II Citation II 75 Am Jur 2d 610 §652.
Sufficiency Of Evidence:

"In determining whether there is evidence that will warrant an instruction, the court does not pass on the weight and sufficiency of the evidence. It is not error to submit an instruction covering a theory advanced by a party if there is any evidence on which to base it, although it may be slight and inconclusive, or opposed to the preponderance of the evidence."

However, it may interest the United States Supreme Court to know the extent of the evidence in a deposition not transcribed, of Dr. Sata. This is the doctor who changed his medical report in his deposition, and yet the defense attorney read the original medical report as bonafide. The plaintiff attorney remained silent and protected the defense attorney and abandoned the client.

The deposition is not transcribed. The doctor is not called to court to testify. The doctor has definite evidence of the aggravated spondylosis. The plaintiff attorney withdraws the instruction. The court is surprised.

The petitioner lives with the pain and aggravation of an injury and injustice.

Plaintiff attorney is questioning Dr. Sata in deposition. Dr. Sata is a Neurologist.

Dr. Sata Deposition: Page 50-51-52:

Q: "Doctor, you have referred to x-ray report dated June 9, 1971, in which it is stated that there is degenerative narrowing of the 6,7 intervertebral levels. Is that right, sir?"

Dr. Sata: "Yes, sir."

Q: "That is the condition that has preexisted the accident in question, isn't that true, sir?"

Dr. Sata: "Yes."

Q: "Doctor, are you acquainted with cases where a condition where there is a degenerative narrowing between discs where there is no pain and no discomfort, and no complaints until some traumatic injury has occurred?

Dr. Sata: "Yes."

Q: "Doctor, have you had any experience in the practice of medicine where people have complaints of pain where there is no, what we generally call, objective evidence by a doctor?"

Dr. Sata: "Yes."

Cont'd

Dr. Sata Deposition: (Cont'd)

Q: "Is it your opinion, Doctor, medically reasonable probable that this patient has suffered complaints and discomfort and pain in her neck because of an aggravation of this preexisting condition?"

Dr. Sata: "I felt that, yes."

Q: "Doctor, do you have an opinion as to whether this lady is honest in her personal feeling and discomfort as she tells it to you?"

Counsel Discussion

Dr. Sata: "I remember the question, it is yes."

The plaintiff attorney told his clients the petitioners that there was nothing in this deposition. This led me to believe the deposition adverse and the document was transcribed for the appeal to present everything out in the open - - including what I thought was adverse.

Instead, here is a deposition in which there is a changed medical report proving deceit in a court of law. Here is a deposition with evidence of a preexisting aggravation and other.

It is important that the United States Supreme Court see the unfair trial in depth. There is a case closely parallelling my injuries. Bonner v U. S. 339 Fed Supp 640, 654 (1972)

JURY FOREMAN AFFIDAVIT

(STATEMENT OF THE CASE) PART II (CONT'D)

Appellate Court Decision: Page 6: Page 7:

The Kokers suggest another new issue in their reply brief. They contend that the jury was guilty of prejudicial misconduct by spending several hours debating Mrs. Koker's "guilt" or "innocence" despite Sage's admission of liability. Issues raised for the first time in the reply brief will not be considered on appeal. Mead School Dist. No. 354 v. Mead Educ. Ass'n, 85 Wn.2d 278, 534 P.2d 561 (1975).

Affirmed.

Pursuant to RCW 2.06.040, this opinion will not be published.

Swanson, J.

WE CONCUR:

Farris, C.J. Swanson, J.

The Court Of Appeals Division I has stated in their opinion issues raised for the first time in the reply brief will not be considered on appeal.

This decision is in conflict with the Court's own rules. COURT RULES RAP 1.2 says the rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits.

Cont'd

JURY FOREMAN AFFIDAVIT

(STATEMENT OF THE CASE) PART II (CONT'D)

Appellate Court Decision: Page 6: Page 7:

The following excerpt is footnote 2. taken from the cited case presented by the court of appeals in their ruling to not recognize the confusion of the jury in the jury foreman affidavit. Cited case page 565. 534 P 2d 561 (1975)

This proves the error of the Washington State Courts on Appeal and the technicality that falsely states the fact.

Cite as, Wash., 534 P.2d 561

85 Wash.2d 278

MEAD SCHOOL DISTRICT NO. 354, a Municipal Corporation, Respondent,

v.

MEAD EDUCATION ASSOCIATION (MEA), an association, et al., Appellants.

No. 43322.

Supreme Court of Washington, En Banc.

April 24, 1975.

2. In their petition for certiorari reviewing the injunction, appellants made several arguments regarding the propriety of the injunction under traditional principles of equity and prevailing labor law. Because of our disposition of the Open Public Meetings Act question, we did not reach them. Mead School Dist. v. Mead Educ. Ass'n, *supra*. Appellants' brief in this case incorporates the Open Public Meetings Act arguments, but not these others. In addition, their reply brief in this case questions the power of an equity court to order specific performance of a personal service contract. This issue was not raised in the opening briefs, however, and consequently will not be considered here. ROA I-41(1).

(STATEMENT OF THE CASE) PART II (CONT'D)

Appellate Court Decision: Page 6: Page 7:

The Court of Appeals Division I- cites a case on page 7 of their decision which does not apply to the circumstances of this petitioner. Circumstances of serious confusion of a jury in a personal injury cause of action.

The reference in the cited case is to ROA I-41 page 394 1976 Desk Copy WASHINGTON RULES OF COURT. This is the Supreme Court Rules On Appeal which is now incorporated into Rules of Appellate Procedure which includes The Court of Appeals and the State Supreme Court. The decision was reached June 1978.

So the cited case refers to the old rule of ROA I-41 which states:

"But the appellant shall not be permitted to urge in any such reply brief or statement of additional authorities, or on the hearing, any grounds for reversal NOT CLEARLY POINTED OUT IN HIS ORIGINAL BRIEF."

The grounds for reversal were CLEARLY pointed out in petitioner's original brief to the appellate court, and even before.

The confusion of the jury was noted to the Court of Appeals Division one in the appeal itself as "passion or prejudice of the JURY DID NOT UNDERSTAND THE EVIDENCE."

As long ago as the Civil Appeal Statement August 1976, this petitioner told the appellate court that ". .if the appellants had been jurors on the case, it would have left them with confusion of thought from beginning to end."

In petitioner's opening brief p 69, the Court of Appeals Division I was told that "Instruction 6: Damages: contributed more CONFUSION to the facts and issues, and that this case was only to settle the amount of damages, and that the instruction 6 made it sound as if the plaintiff was ON TRIAL, not in trial."

Opening Brief p 69 was related the newspaper man who came into the courtroom and stayed just a short while, then asked a waiting witness in the hall why the plaintiff was on TRIAL!

In presenting the jury foreman affidavit to the Court of Appeals in the reply brief the court was told exactly how the affidavt was obtained, they knew all of the mention of CONFUSION IN THE TRIAL from the appeal, civil appeal, and opening brief. Quoting: Reply Brief p 13:

"Mr. Wood, the jury foreman, was told I did not have questions about the jury members personally or what they thought or said about issues or evidence. I had only one question and it was entirely for the purpose of verification of what I knew to be true. Mr. Wood was told my beliefs that the jurors thought Beatrice Koker was on trial for "something" because of the errors revolving around the substance of the trial and the study of the facts. That it was believed by the appellant the jury considered me "guilty" because if a newspaper man can come objectively into a trial

courtroom and stay a short while and then ask waiting witnesses in the hall "why is that woman ON TRIAL?", the jury could not be immune to such an atmosphere of CONFUSION." "The inadequate verdict spoke volumes and the RECORD spoke for itself."

One question was asked the jury foreman by this petitioner:

"Did the jury think I was on trial and guilty of something? Was the jury CONFUSED and did not understand?"

The jury foreman was silent a long time from the shock of my question accurately expressed, then he OFFERED to go to the Court of Appeals to testify or whatever he could do to help.

Page 14 Reply Brief: Quoting:

"Mr. Wood dictated the affidavit statement to me. The statement was typed verbatim and read back to him. His sworn testimony is VERIFICATION OF THE TRUTH OF THE FACTS OF CONFUSION AND NOT UNDERSTANDING BY THE JURORS AS PROCLAIMED BY APPELLANT FROM BEGINNING TO END."

The subject of confusion was brought up in the appeal, the civil appeal statement, the opening brief and the reply brief was the proof of the confusion alleged from the beginning of the appeal. Yet the appellate court grasps as a technicality an old Supreme Court Rule citation case, ignores the court rules of waiver and interpretation Rule 1.2 and their power to raise new issues themselves.

(STATEMENT OF THE CASE) PART II (CONT'D)

Appellate Court Decision: Page 6: Page 7:

Washington Court Rules RAP 1.2 states the cases and issues will not be determined on the basis of compliance or non compliance with the rules when justice is involved. Provisions of any of the rules may be waived or altered in order to serve the ends of justice.

The appellate court ignored this rule and used technicality to prevent justice on appeal.

RULE 1.2 INTERPRETATION AND WAIVER OF RULES BY COURT

(a) **Interpretation.** These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in Rule 18.8(b).

(b) **Words of Command.** Unless the context of the rule indicates otherwise: "Should" is used when referring to an act a party or counsel for a party is under an obligation to perform. The court will ordinarily impose sanctions if the act is not done within the time or in the manner specified. The word "must" is used in place of "should" if extending the time within which the act must be done is subject to the severe test under Rule 18.8(b) or to emphasize failure to perform the act in a timely way may result in more severe than usual sanctions. The word "will" or "may" is used when referring to an act of the appellate court. The word "shall" is used when referring to an act that is to be done by an entity other than the appellate court, a party, or counsel for a party.

(c) **Waiver.** The appellate court may waive or alter the provisions of any of these rules in order to serve the ends of justice, subject to the restrictions in Rule 18.8(b) and (c).

The jury foreman affidavit proves the trier of the fact in the case at bar, was so confused it took approximately 2 hours to convince the jurors the petitioner-victim is not guilty.
(Appendix B-1)

The extent of the confusion is measured by the length of time of 2 hours to convince the jurors a "not guilty" verdict should be brought in for someone with injuries.

Fact: There is a confused jury.

Fact: Confusion of the jury is not a new issue in the reply brief.

Quoting From Reconsideration Document: P 16:

"The issue of confusion is not a new issue but has been an issue since the appeal was filed. Recurring throughout the briefs and papers submitted in appeal.

"The affidavit is "proof" of the old issue of confusion in trial."

"Please reconsider the jury foreman affidavit as proof of confusion of the trial and deliberations."

The Court of Appeals Div I used a mistaken premise for their technicality to deny justice that is due and overdue. Thus there is abuse of discretion in the decision on appeal and the refusal of the petition for review en banc and the denial of the reconsideration.

The cited case page 7 Appellate Court Decision has an unobtrusive footnote (2.) which I feel was overlooked in the appellate ruling about the jury foreman affidavit. The footnote clearly states an ISSUE NOT MENTIONED IN THE OPENING BRIEF OR CLEARLY STATES AN ISSUE THERE, cannot be considered in the reply brief. The technicality in the court's ruling is erroneous because the confusion was mentioned, clearly stated, from beginning to end of that appeal.

(STATEMENT OF THE CASE) PART II (CONT'D)

Appellate Court Decision: Page 6: Page 7:

WASHINGTON COURT RULES 1979 Page 336:

> **RULE 12.1 BASIS FOR DECISION**
>
> **(a) Generally.** Except as provided in section (b), the appellate court will decide a case only on the basis of issues set forth by the parties in their briefs.
>
> **(b) Issues Raised by the Court.** If the appellate court concludes that an issue which is not set forth in the briefs should be considered to properly decide a case, the court may notify the parties and give them an opportunity to present written argument on the issue raised by the court.

Rule 12.1 speaks of the Court of Appeals deciding cases on the basis of issues set forth by the parties in their BRIEFS. This is a plural reference. In fact, the rule allows the court of appeals to raise a new issue.

Contrary to this rule and rule 1.2 Waiver and Interpretation, the appellate court refused to recognize confusion of the jury because the affidavit of the jury foreman was in the reply brief.

The Court Rule 12.1 says "briefs" in plural form indicating justice of the case demands issues be raised even by the court itself.

Rule 1.2 is to promote justice on the merits. Proven deceit in a trial, prejudice from rulings indicated more definitely with conflict cases, untruths to the judge and jury, and others, all proven from the record is set aside with a prejudical wave of the judicial power of the Court of Appeals Division I.

Proven presentation of wrongdoing is just disregarded in setting aside the rules of the court and authorities and in spite of proven circumstances of an unfair trial, affirm the verdict of a confused jury.

STATEMENT OF THE CASE

PART III

REHEARING RULE ROA I-50 REPEALED

DESPERATE MOTIONS TO BE HEARD - - FAILED

STATEMENT OF THE CASE

PART IV

ORIGINAL RECORDS AND FILES WERE RELEASED FROM PROTECTION CUSTODY OF COURT OF APPEALS DIVISION I FOR 46 DAYS. THIS IS NEW ISSUE.

(STATEMENT OF THE CASE) PART III

REHEARING REPEALED:

A rehearing is the finality of the "day in court", and this rehearing was denied petitioner by the Washington State Supreme Court because the rehearing rule is repealed.

A search for a "hearing" to substitute by motion to present evidence-letter of imperative importance to the error of deceit ended in failure.

The mandate had not been issued but the petition for review was denied. A motion was submitted to the Court of Appeals Div I wherein the jurisdiction. Motions from Feb through June 1979 supplied by petitioner 3 copies to the appellate court and nine copies en banc to the State Supreme Court, so that no extra work was done by either state court in that respect.

The clerk of the appellate court returned the motion submitted containing the letter-evidence. An appeal to the judges was made, and the judges of the Court of Appeals ruled on that motion. Denied. The mandate had not been issued.

No word of the denial of the motion was sent to this petitioner until 7 days after the ruling. Then within 24 hours of the notification of denial of ruling, the mandate was issued estopping review of the motion.

(STATEMENT OF THE CASE) PART III (CONT'D)

REHEARING REPEALED: (Cont'd)

The right to be heard in due process of law annihilated with repeal of rehearing. The right to be heard to ask for review of a denied motion estopped by premature issuance of the mandate.

A motion to recall the mandate was submitted to the Court of Appeals Div I and the motion disappeared.

At the closing portion of the 30 days in which a mandate becomes final, petitioner went to the appellate court to protect her rights. If the mandate is final in 30 days and no ruling by the court, the question of recall could become moot.

The clerk of the appellate court did not look at my motion but refused to docket the motion. My query then was as to the whereabouts of the motion, was met with: "The mandate is final," accompanied by a gentle fist on the counter in rhythm to the words.

I asked if the judges had the motion and if the motion had been ruled upon or where it was. The answer: "The mandate is final," and the fist accompanying rhythm again on the counter. The question was asked how a mandate is final when there is a pending motion. The same answer and gestures.

REHEARING REPEALED: (CONT'D)

A woman of pride does not bother people. So with a refused-to-docket-motion, and no information as to the whereabouts of a mandate recall motion, the petitioner left quietly.

A journey was made to the State Supreme Court in desperation, to ask for help and to lift the case out of the appellate court under rule 4.3. The Supreme Court located the recall of the mandate motion immediately.

Why would the Clerk of the Court of Appeals refuse to answer my polite questions as to the standing of the recall motion?

This clerk had never been rude. He is a gentleman, polite and kind up until the time for rehearing and the repeal of that constitutional right. The motions that followed in an attempt to be "heard" left kindness amiss. The repeal of the rehearing must be responsible some way, but I do not know how.

Recall of the mandate denied by the Court of Appeals Div I. Discretionary review allowed by the State Supreme Court who knew of the separate desperation journeys to their court for help because there was "no freedom to act" "no place to turn."

Appendix A-12(a)(b) and A-13 and A-13(a) indicates the futile attempt to get the Supreme Court the letter evidence.

REHEARING REPEALED: (Cont'd)

The State Supreme Court removed my right to rehearing, and even denied me "hearing" in a motion of vital evidence of deceit.

The discretionary review denied by the commissioner on a technicality and the Supreme Court denied to modify. All ruling asked en banc for the letter-evidence as the deceit error 3(A) was ruled en banc in the petition for review.

There was no en banc ruling in the motions. No rehearing. No hearing.

From the experience in the "motion era" from February 1979 until June 1979, there was a discrimination felt not encountered before on appeal. I do not want to be pro se but there is no other way. The expense would be prohibitive.

Ironic:

The state appellate structure denies the right to a rehearing, and then the State of Washington Constitution supplies the jurisdiction to the United States Supreme Court under Article 4 §2 for such an action. (Aforementioned and cited)

(STATEMENT OF THE CASE) PART IV

NEW ISSUE RELEASED ORIGINAL FILES:

The original records, papers, exhibits, the entire original file under the protective-custody-jurisdiction of the State Supreme Court was released from that court. The Clerk of that court assumed they were still in state supreme court as per the memo of Appendix A-16:

The Court of Appeals Division I had the records and released the entire file #4916-I "under color of law" to the adversary of this petitioner in a civil action. A copy of the pending appeal to the United States Supreme Court had been sent to the appellate court certified mail so they had knowledge.

Peitioner asked that the original file be called in immediately. In answer, the Court of Appeals extended the time 12 more days to keep the original files. 46 days out of there jurisdiction to that point.

The records are now back in the State Supreme Court. A motion was sent to have the records and file recertified but the motion was filed and no action is to be taken until the jurisdictional statement is acted upon. I respectfully ask the Supreme Court to honor the new issue if this is possible as releasing original records on a pending appeal is a constitutional question as aforementioned in this document.

Statement Of Case PART IV
"New Issue" "Original Record)

FEDERAL QUESTION I . . . . .

Unfair Trial

FEDERAL QUESTION II . . . . .

Rehearing Repealed

FEDERAL QUESTION III . . . . .

Original Records Released
New Issue

GROUNDS UPON WHICH FEDERAL QUESTIONS ARE SUBSTANTIAL

(SUBSTANTIAL FEDERAL QUESTIONS)

Federal Question I: UNFAIR TRIAL

This is a personal injury, defense admitted liability case and deceit, umtruths, misleadimg the jury, concealment, fraud of the court, by the quasi-judicial officers of that courtroom.

The Federal Questions are substantial. What branch of the judicial system has as much influence to maintain a fair trial, and justice in the courts than attorneys? The public thinks of a courtroom and the immediate correlation is "judge" "jury" "attorney" "to tell the truth, the whole truth and nothing but the truth."

The late Honorable Mr. Justice Jackson, concurring in Hickman v Taylor 329 U.S. 514, 515 says:

> "But it is too often overlooked that the lawyers and the law office are indispensable parts of our administration of justice . . The welfare and tone of the legal profession is therefore of prime consequence to society."

The abuse of discretion by the trial court judge in rulings may have been prompted by his lack of investigation of fact-facts and also common-sense-facts. The trial court judge trusted the attorneys of record for complete truth, honor, honesty, integrity of their profession and to uphold the law of the land and the dignity of the court and respect.

Federal Question I: UNFAIR TRIAL (Cont'd)

The record shows confusion and disorganization, and hesitancy on the part of the judge, and close ties of the attorneys in trial.

RP VOL II p 164/18-19-20: The Judge Speaking:

> "My memory is that that was the time when there was some deal of confusion and we weren't clear what reports of Dr. Sata indeed went to Dr. Freidinger."

The confusion and disorganization occurred at RP VOL II p 133/3-4: The Judge Speaking:

> "Members of the jury, I am going to excuse you until counsel can get themselves organized."

The judge denied a defense motion and said to both defense and plaintiff attorney: RP VOL II p 93/7-14:

> "I don't know how this case operated. It looks to me it was very informally handled between counsel, you know each other and so forth."

PART II Statement Of The Case holds the errors in the trial. Both attorneys are involved. (The defense attorney and plaintiff attorney.)

Cont'd

Federal Question I: UNFAIR TRIAL (Cont'd)

The trial ended without anyone knowing of the deceit and wrongdoing except the wrongdoers.

A motion for new trial or in the alternative additur was made under rule CR 59 (1)(2)(3)(4)(5)(6)(7)(8)(9)

The Ruling: Trial Court

The primary question presented by motion for new trial is whether there has been a fair trial. LeVea v G. A. Gray Corp (1977) 17 Wash App 214, 562 P 2d 1276.

Quoting Headnote (8): New Trial - - Determination - - Review - - Trial Conduct

> "A motion for new trial requires a determination of whether or not the moving party had a fair trial. When such a motion involves assessing events occurring during trial and their potential effect on the jury, the reviewing court will accord considerable weight to the trial court's determination."

BUT THE JURY WAS SO CONFUSED IT TOOK THE JURY FOREMAN APPROXIMATELY 2 HOURS TO CONVINCE THE JURORS THE VICTIM OF PERMANENT PERSONAL INJURIES WAS "NOT GUILTY." THE JUDGE DID NOT KNOW! See: Appendix B-1: HOW COULD A JUDGE ASSESS EVENTS IN TRIAL WHEN DECEIT IS PRESENT?

Federal Question I: UNFAIR TRIAL (Cont'd)

The trial court denied the motion for new trial or additur, reluctantly, with misgivings, the Judge did not like the verdict. But in denying the motion, he ruled upon the Federal Question I.

The Ruling: Court Of Appeals Division I

The Federal Question of "unfair trial" was raised in the appellate court by the appeal of denial of motion for new trial or additur, inadequate damages via assignment of errors, new issues for review. The appellate court AFFIRMED the decision of the trial court.

The abuse of discretion in the appellate court is that the Honorable Judges were informed of the deceit and wrongful acts in a court of law with proof from the record. The decision from that court held technicalities which penalized the litigant-victim, saying in essence a trial filled with deceit is a fair trial. Ignored court rules and authorities.

The appellate court KNEW that the trial court DID NOT KNOW of the deceit during the trial proceedings and why he didn't know. Investigation of facts that should have alerted him to suspicion, were waylaid by trust of the attorneys he had every right to trust. NOT TO BLINDLY TRUST THE ATTORNEYS WITHOUT FINDING INVESTIGATIVE FACTS. The first paragraph p 5 appellate court decision said this trial was fair.

(SUBSTANTIAL FEDERAL QUESTION) CONT'D

Federal Question I: UNFAIR TRIAL (Cont'd)

The Ruling: Washington State Supreme Court

The state supreme court denied the petition for review en banc, upholding a confused jury and a deceitful trial, ignoring court rules and conflict authorities and did not use the extraordinary powers entrusted to the court for redress, remedy, justice.

This petitioner is being victimized by allowing the decision of the appellate court upholding the trial court affirmed, when the power of the supreme court of the state is to preserve justice, protect justice, remand for justice, and waiver any rule for the sake of justice of the case.

The appellate court and supreme court of the State of Washington knew of the reported wrongdoings from the record, and the obvious proof there could never be a fair trial in those circumstances.

There was additional proof from a jury foreman in affidavit proving not only confusion of the jury but the EXTENT OF THE CONFUSION!

The state appellate courts could not have reached their decisions without either tacitly or expressly deciding a Federal matter of a fair trial. This is not a local law case, this is denial of a federal right to a fair trial in a meaningful way according to the Constitution.

Cont'd

Federal Question I: "UNFAIR TRIAL" Cont'd

|| Citation || CONSTITUTION OF THE UNITED STATES AMENDMENT 14 Citizens Of United States Note 20 p 59

"Judicial action in private disputes is a form of state action required for application of this clause prohibiting state from abridging the privileges and immunities of citizens."

Hosey v Club Van Cortlandt 299 F Supp (1969) D.C.N.Y. Appeal: 28 U.S.C.A. 1257(3)

Procedural Due Process:

Procedural due process is needed, expected, demanded in even small claims courts. The Fourteenth Amendment of the United States Constitution guaranty of fundamental fairness and due process is applicable to all proceedings irrespective of whether they are denominated criminal or civil, if the outcome may be the deprivation of a person's liberty. Procedural due process is not only when some vested right is being impaired. CONSTITUTION Amendment 14 Note 551 p 414

"Touchstones of procedural due process are fairness and reasonableness." CONSTITUTION Amendment 14 Note 855 p 649 Clutchette v Procunier D. C. Cal (1971) 328 F Supp 767

Federal Question I: "UNFAIR TRIAL" Cont'd

[Citation] CONSTITUTION OF THE UNITED STATES ANNOTATED Due Process Of Law Amendment 14 Note 123 p 220

"Test as to whether a party has been afforded procedural due process is one of fundamental fairness in the light of total circumstances."

* Watson v Patterson 358 F 2d 297 (1966)
* Whitfield v Simpson 312 F Supp 889 (1970
* Buttny v Smiley 281 F. Supp 280 (1968)

[Citation] CONSTITUTION OF THE UNITED STATES ANNOTATED Due Process Of Law Amendment 14 Note 123 p 220

"Due process is not measured by the yardstick of personal reaction or the sphygmogram of the most sensitive person, but by that whole community sense of decency and fairness that has been woven by common experience into the fabric of acceptable conduct."

Breithaupt v Abram N. M. (1957) 77 S. Ct 408, 352 U. S. 432, 1 L ed 2d 448

Note 123 p 220: "This cause eacts from the states a conception of fundamental justice." Shields v Beto C. A. Tex (1967) 370 F 2d 1003

Note 123 p 220: "Denial of due process" is conduct that shocks conscience and offends sense of justice." Buder v Bell C. A. Mich (1962) 306 F 2d 71

Federal Question I: "UNFAIR TRIAL" Cont'd

[Citation] CONSTITUTION OF THE UNITED STATES ANNOTATED Due Process Of Law Amendment 14 Note 123 p 220

"Guarantee of this amendment is not that just result shall have been obtained, but that result, whatever it may be, shall have been reached in a fair way." Mounts v Boles C. A. W. Va (1963) 326 F 2d 186

Note 634: "Due process challenged, in order to be upheld, must demonstrate such fundamental unfairness as to preclude possibility of a fair trial." Landers v Smith (1970) 174 SE 2d 427, 226 Ga 274

[Citation] 3C Wash D 474 Wests Key 319 CONSTITUTIONAL LAW Right To Justice And Remedies For Injuries

"Duties imposed upon the Supreme Court, the Court of Appeals and Superior Courts under the Constitution include, among others, the fair and impartial administration of justice and the duty to see that justice is done in cases that come before them." RCWA Const. Art. 4, §1; Art 4 § 30, as amended Amend. 50 Iverson v Marine Bancorporation 517 P 2d 197, 83 Wash 2d 163 (1973)

Federal Question II: "NO REHEARING"

Rehearing Rule ROA I-50 repealed and this is repugnant to the Constitution of the United States and the Constitution of the State of Washington. See: Appendix A-7:

This appeal is pursuant to 28 U.S.C.A. 1257(3) and the Constitution Of The United States. The following citation provides the jurisdiction for the United States Supreme Court Federal Question II:

|| Citation || CONSTITUTION OF THE STATE OF WASHINGTON Art. 4, §2 p 335

Art. 4, § 2 CONSTITUTION OF WASHINGTON

Under 28 USC § 1257, restricting United States Supreme Court's review of state decisions to judgments rendered "by the highest court of a state in which a decision could be had," judgment rendered by Department One of Supreme Court of Washington is reviewable in United States Supreme Court, where rehearing en banc before Washington Supreme Court is not granted as matter of right, Washington Constitution and Statutes authorize its supreme court to sit in two Departments, each of which is empowered to hear and determine causes on all questions arising therein, cases coming before court may be assigned to Department or to court en banc at discretion of Chief Justice and specified number of other members of court, and decision of Department becomes final judgment of Washington Supreme Court unless within specified time petition for hearing has been filed or rehearing has been ordered on court's own initiative. Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers v Lucas Flour Co. (1962) 369 US 95, 7 L ed 2d 593, 82 S Ct 571.

Federal Question II: "NO REHEARING" Cont'd

The denial of rehearing is an independent ground for review under this court's power to supervise the administration of justice in federal courts under the doctrine in:
Western Pac Corp v Western Pac R Co
345 U. S. 247, 260

THERE IS A CONSTITUTIONAL ISSUE IN THE FEDERAL QUESTIONS I AND II.

|| Citation || UNITED STATES CONSTITUTION
West's Pacific Digest Vol 8 p 421 XII
West's Key 321 Constitutional Guaranties
In General:

"Defendants "day in court" is not complete until his motion for rehearing before the Supreme Court is determined." State V Pudman
177 P 2d 376, 65 Ariz 197

Claim:

This petitioner claims that the state regulation is inconsistent with federal law and poses a constitutional issue under USCA CONST. Art 6, §2 jurisdictionally cognizable under this section in repealing ROA I-50 - Rehearing in the State of Washington.

Federal Question II: "NO REHEARING" Cont'd

|| Citation || UNITED STATES CODE ANNOTATED

ARTICLE III 6, cl. 2 p 723 Note 4

"Where state and federal statutes are in conflict, federal law must prevail." In re Sheptaw's Estate(1959) 343 P 2d 740, 54 Wash 2d 602

|| Citation || JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES (TREATISE) Robertson and Kirkham Part 1 Ch 2 p 12 §7

Quoting from: Hamilton v Regents of Univ of Calif 293 U. S. 245,257,258, 55 S. Ct. 197, 79 L Ed 343:

"Any enactment, from whatever source originating, to which a State gives the force of law is a statute of the State, within the meaning of the clause cited related to the Jurisdiction of this court." Williams v Bruffy 96 U. S. 594, 603, 24 L Ed 1018

|| Citation || MODERN CONSTITUTIONAL LAW §7 p 14 "ONE'S DAY IN COURT"

"The United States Supreme Court has referred to "the right to be heard" as "one of the most fundamental requisites of due process." Again, it has stated: "A fundamental requirement of due process is the opportunity to be heard." Armstron v Manzo (1965) 380 U. S. 545, 14 L Ed 2d 62, 85 S. Ct. 1187

Federal Question II: "NO REHEARING' Cont'd

"In Saunders v Shaw 214 U. S. 137, 37 S. Ct 638, 61 L Ed 1163, it was held that where it is the act of the state supreme court itself done in its opinion and decision and coming unexpectedly at the end of the proceeding when appellant no longer had any opportunity to add to the record, which denies appellant a federal right, and thus, for the first time imports into the case the federal question sought to be reviewed, a raising of the question for the first time in the assignment of errors accompanying a writ of error (now appeal) to the Supreme Court will be deemed to be timely."

NO REHEARING:

There were two reasons to have rehearing for this petitioner. (a) To review and rehear the entire case of an unfair trial, (b) there was found letter-evidence imperative to deceit in the trial which never could be put in for rehearing Error 3(a) which had been heard en banc in petition for review. This denial of rehearing because of the repeal of ROA I-50 came at the end of the proceedings of appeal in the State of Washington, and unexpectedly and there was no way to add to the record and that is the denial of a federal right. And timely raised herein. Appendix A-7 is a letter from the State Supreme Court Clerk saying ROA I-50 "rehearing" had been repealed and no further procedures are available under the rules and no additional pleadings would be considered. THIS IS A FEDERAL QUESTION.

Federal Question II: "NO REHEARING'(Cont'd)

(1) As per quoted from Hamilton v Regents supra, any enactment from whatever source originating, to which a State gives the force of law is a statute of the State.

(2) Rehearing is abolished by repeal, and has the force of law. Whether a state statute violates the federal constitution involves a federal question and gives the federal court jurisdiction." Risley v City of Utica C. C. N. Y. (1909) 173 F 502

(3) When there is an unavoidable conflict between the Federal and state, the supremacy clause of course controls. Reynolds v Sims 377 U. S. 533, 584 (1964)

(4) A denial of due process cannot be justified by a state on any adequate nonfederal ground. Edelman v California 344 U.S. 357 73 S. Ct. 293, 97 L. Ed 387

(5) A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government. The Constitution Of The State Of Washington RCW VOLUME 0 p 6 §32 FUNDAMENTAL PRINCIPLES

Federal Question III: "ORIGINAL RECORDS"

The original record on appeal in state appellate courts #4916-I was released out of the custody and jurisdiction of the Court of Appeals Division I, five days after the final decision in Washington State Supreme Court.

There was an appeal filed to the United States Supreme Court August 7, 1979. On that date the Clerk of the State Supreme Court verified the original records were in his court. Appendix A-16: Memorandum from Deputy of Federal District Court.

There is a pending appeal to the United States Supreme Court of which the Court of Appeals was aware having been sent a copy of the appeal certified mail.

There is a pending civil action against the very person to whom the original file was released, with a courtesy extension of 12 days time.

Petitioner made discovery her original file was "missing' when personnel in the Court of Appeals Division I could not find the file to xerox one document needed.

The entire file had been released 41 days and was not docketed until September 10 or 11, 1979! Appendix A-17(a)(b)

[SUBSTANTIAL FEDERAL QUESTION] CONT'D

Federal Question III: "ORIGINAL RECORDS"

The federal question herein concerns certification of the original file for appeal to the United States Supreme Court. It is understandable under the circumstances to want this done before further problem could happen. The original report of proceedings are needed for the civil case.

A motion for Special Accelerated Proceedings was submitted under rules to go to the judges only. The Clerk of the State Supreme Court filed the motion and "shelved" the action upon it, thus preventing sanctions and terms for the "act under color of law" in regard to the lack of protection of my records. Appendix A-18(a)(b) First two pages of motion. Appendix A-23 Reply from the Clerk of the State Supreme Court. Appendix A-24: Petitioner's motion to reactivate first motion. Reasons.

The Jurisdiction of this Federal Question III belongs in the United States Supreme Court because the release of an original file directly affects the appeal to your court. The recertification must be done to your satisfaction. The Supreme Court Clerk cannot now certify these records to have been in his jurisdiction since the original filing.

The jurisdiction is sought pursuant to
42 U.S.C.A. 1983 42 U.S.C.A. 1984
42 U.S.C.A. 1985 28 U.S.C.A. 1343
28 U.S.C.A. 1738 28 U.S.C.A. Rule 1

[SUBSTANTIAL FEDERAL QUESTION] CONT'D

Federal Question III: "ORIGINAL RECORDS"

Federal Question III is a NEW ISSUE in this appeal and directly affects this appeal. I respectfully ask the United States Supreme Court to take whatever action necessary if recertification fails.

[Citation] CONSTITUTION OF THE UNITED STATES ANNOTATED AMENDMENT 14 Citizens Of The United States Note 9 p 52

"The privileges and immunities of 42 USCA §1983 rendering liable a person who under color of law subjects a person to deprivation of privileges or immunities secured by Federal Constitution are the privileges and immunities of Art. 4, §2, cl. 1, and of this amendment." Valle v Stengel C.A.N.J (1949) 176 F 2d 697

[Citation] CONSTITUTION OF THE UNITED STATES ANNOTATED AMENDMENT 14 Citizens Of The United States Note 11 p 55

"This amendment governs any action of a state whether through its legislature, through its courts, or through its executive or administrative officers." Voight v Webb D. C. Wash. (1942)
Not 11 p 55

Federal Question III: "ORIGINAL RECORDS"

(1) 28 U.S.C.A. 1738 Note 25 indicates that any court receiving a certified record does not even have to ask if the clerk of the supreme court or the clerk of the appellate court has had custody of the original files since it was filed. That fact is assumed because the rule is so stringent files are not released unless the court so orders.

(2) It has been recognized that 18 U.S.C.A. §1503 protects not only court proceedings, but such proceedings as preliminary hearings and grand jury investigations as well, since the latter-mentioned or proceedings serve as an extension of the court. Thus, the "due administration of justice" can begin at the earliest, with the filing of the complaint, and it does not end, at the latest, until the final disposition of the last appeal. Obstructive action taken at any point in between, even while there is no judicial proceedings, actually in progress, is punishable, since the matter would still be pending.

(3) The trial in the case at bar was conducted in so highly a prejudical manner as to amount to denial of due process, so deceitful as to qualify to set aside the verdict. Citron v Aro Corp 377 F 2d 750 certiorari denied, 88 S. Ct. 473, 389 U.S. 973, 19 L Ed 2d 466. Remanded for new trial.

SUBSTANTIAL GROUNDS: "Public Interest" "Constitutional"

A fair trial is public concern and interest because of the "long arm protection" of the United States Constitution as a personal birthright for each American.

An unfair trial is public concern and interest because there is outrage that such a trial could happen in the first place, and any unfair trial is a personal insult even when it happens to someone else because we all share the same inherent right to a foregone conclusion from birth in every family - fair trial.

There is public doubt and disrespect of the validity of the jury system when a jury becomes so confused from a disorganized, deceitful, untruths-in-trial, the jurors have to be convinced approximately 2 hours that the accident victim is not guilty!

Only when a trial is the soul of fairness can that trial be truly the soul of reason and acceptable to people.

Could this deceit destroy justice? Both the defense and plaintiff attorneys knew a doctor changed his medical report in a deposition. The defense attorney read the original medical report as bonafide when in fact he knew the medical report was changed.

SUBSTANTIAL GROUNDS: "Public Interest"
"Constitutional"

The plaintiff attorney listened, objected, was overruled and had a duty to speak of the deceit and kept silent acquiescing to protecting a colleague and deserting his client.

What did the doctor change in his deposition? Page 22 and 23 Deposition

The Doctor: "You know, as I look at my impression from which you are asking me the questions, I realize that I probably expressed this impression without too much thought."

Deposition p 25/23-24-25: p 26/1-2:

The Doctor: "- - I am simply trying to clarify my thoughts regarding this patient. I have no axe to grind and I don't feel that I have to be held to any report that I submitted if I don't think this is proper at this time."

Limbo Land:

The deceit of the changed medical report read as bonafide was not intended to be discovered. A wrong committed. A silence to cover it up. Discovery by petitioner of the deceit was unintentional while the presentation of "everything out in the open" on appeal.

SUBSTANTIAL GROUNDS: "Public Interest"
"Constitutional"

Petitioner's understanding was accurate from a telephone conversation from her then-attorney who said a deposition had been held and there was nothing "for me" in the deposition. Thus, portraying an adverse deposition.

In honesty, the deposition was located with difficulty as not having been transcribed. Approximately $109. was borrowed and the deposition was transcribed.

Comparing the report of proceedings with the deposition, revealed proof of deceit in a court of law, misleading the jury, misrepresentation of fact and suppression of fact, concealment from the judge, jury and the litigants.

The deposition was submitted to the appeal as Error 3(a) and a prior new issue. The deposition was said to be the "vessel of proof" of the deceit which is the newly discovered evidence.

Would public trust in the courts ever accept deceit in a court of law. "The truth, the whole truth, and nothing but the truth" is synonymous with "court trial" "courtroom".

SUBSTANTIAL GROUNDS: "Public Interest"
"Constitutional"

PART II Statement of the Case holds further proof of the tenure of the trial. The mental status attacks upon this petitioner is humiliating, embarrassing, heartache to a woman of pride, integrity and a sense of honor and decency.

The public interest extended to a psychiatrist and also a former member of the mayor's office which status is now "retired." See: Appendix A-22

PEOPLE CARE. The public interest extends to a donated typewriter to complete the Jurisdictional Statement. Another member of the "public" has cut all of the paper in this document to size. A local typewriter shop has allowed me to charge the typewriter ribbons, others help with the xeroxing and correlating.

The money for this appeal and all other appeals to date is loaned by members of the "public".

A fair trial is the foremost concept of our heritage of a sacred court of law, with the unsullied sanctity of the jury to settle disputes and lives.

The jury is guaranteed to have absolute sanctity of their function-search to justice. To intercept the purpose of a jury, is to intrude upon the public right to the security

SUBSTANTIAL GROUNDS: "Public Interest"
"Constitutional"

OF Constitutional protection. The jury in the case at bar were good and sincere people. Their "public interest" in a fair trial was to serve on a jury when called. This petitioner has asked an apology for that jury on the grounds of confusion and untruths in the proceedings in a court of law which caused misconception of the law, not considering all elements of damage involved, disregarding the weight and preponderance of the evidence, missing consideration of issues, then failing to follow instructions given by the Court.

To falsify the trial is to falsify the meaning of the Constitution. To lie to a jury is to ban the foundation of truth to which a jury is committed by law.

The Court of Appeals Division I had the power and from the record, the proof, to set aside the wrongful verdict and award a new trial.

The appellate court allowed the verdict to stand and created a monument to injustice.

The "public" looks to the appellate courts as the sentry-guard of justice, thereby being the Constitutional added protection to a fair trial.

Citizens do not understand the law as a lay person, nor the procedure of the courtroom and are there in complete trust

SUBSTANTIAL GROUNDS: "Public Interest"
"Constitutional"

and reliance upon the Constitution which allows nothing but a fair trial as a matter of right.

A public doubt of justice is created wherein there is forfeit of trust and reliance in the trial court by the quasi judicial officers of the court, lack of prevention by the judge of the court, the encounter with word of the result of a confused jury, affirmance of the wrong in the appellate court and denial to review by the highest court of the state.

The "public interest and concern" in such a situation revolves around the human premise of: "If it happened to her, it could happen to me, it could happen to anyone."

"Public interest" has given me the courage to appeal alone. This is a very special kind of case. Even though I pray herein for relief of the judgment and appeal from state courts and reversal for trial or additur, it is also hoped this petitioner's plight will focus this court's attention on the public menace of my personal situation in an unfair trial.

I pray the rectifying of this unfair trial will serve a precedent, for then this judicial ordeal will have served a purpose in the anguish.

SUBSTANTIAL GROUNDS: "Right To Be Heard"
"No One To Listen"

Federal Question II, the repeal of the rehearing in the State of Washington, which is a ruling repugnant to the Constitution of the United States in which the "day in court" is not complete until the final rehearing before the Supreme Court.

The denial of rehearing became a dilemna in which there is a "right to be heard" and there is "no one to listen."

SUBSTANTIAL GROUNDS: "Original Records"

Substantial grounds for this as a new issue before the United States Supreme Court involves the certification of the original file records for this appeal.

The subject matter of new issue is within the jurisdiction of the highest court in America in a pending appeal. Without the certification of the records, what will you have to consider?

Please weigh carefully what probable reason there could be for releasing the original file for 46 days into the possession of an adversary in a civil action, and thereby ruining the certification of an evidentiary pleading-complaint based upon the Original report of proceedings.

SUBSTANTIAL GROUNDS: "Motion Shelved"

A motion to review wrongdoing under the color of law, and to recertify the original records released from the appellate court, was filed and shelved without further action by the Clerk of the Supreme Court. Appendix-A-23:

By law, the motion must be docketed but to set the motion aside without action is just another technicality and is equivalent to not docketing at all.

The hopeful concensus without doubt, is that the petitioner's Jurisdictional Statement will be refused by the United States Supreme Court and those acting "under color of law" will escape sanctions and terms.

The implication being that it does not matter what wrong is committed with the original files released against the constitutional rights of a litigant pro se, as long as the United States Court does not consider the appeal.

I respectfully ask your reflection upon an unfair trial in a court of law in deceit, a confused jury, proven from the record facts that cannot uphold a jury verdict. The appeal which should have overturned the denial of motion for new trial or additur by trial court because of abuse of discretion by the court, merely affirmed an act of injustice. Instead of redress and remedy through the court-of-last resort in the state in petition for review, that too was denied en banc.

SUBSTANTIAL GROUNDS: "Motion Shelved"

The rehearing is abolished in this state denying a constitutional right, and then the imperative evidence to be submitted was rejected in motions and review. And even after the last echo of "denied", the original files have been confiscated "under color of law".

Justice must not be controlled and repressed in this chain reaction of injustice. The trial and appeal in the case at bar and the circumstances therein are a precedent and have worked havoc and anguish.

This repugnant trial and appeal and "under color of law" acts cannot stand as an example of justice in the courts.

Apart from the denial of individual rights of this petitioner, which is the purpose of this appeal, there is also the public policy of individual rights with this petitioner Beatrice Koker the example of what can and did happen.

|| Citation ||

"Policy of finality is, and should be strong, but in the face of unusual factors, equitable principles encompassed within rule justify further inquiry." Bros Incorporated v W. E. Grave Manufacturing Company 320 F 2d 594 (1963) Headnote 28: Wests Key 2648

CONCLUSION

CONCLUSION:

The Jurisdiction of the United States Supreme Court is respectfully asked by this petitioner, on the basis of the reasons aformentioned throughout this document, and for future briefs on the merits for the resolution of this appeal.

There is conversational overtones from those porported to know, the percentage of appeals accepted by the United States Supreme Court is so remote, the states are not concerned about state rulings being questioned.

That fact, if true, gives considerable power-monopoly to state courts. The fact was also pointed out, that this petitioner is only one person, one trial, one injustice, and the Indians, the fishermen, the classes of people with problems are more priority than one middle-aged woman waging an agonized appeal alone.

There are young people watching legal actions by what they call the "system." The young people consider me in a futility appeal because of the "system."

Petitioner is for the system and that is one reason to fight to preserve the system so that it is possible to edify the freedom and justice as a fact and not just a "preaching with no practice" phrases of constitutional promises.

CONCLUSION: (Cont'd)

Petitioner is floundering in the law books in a first-aid room in a Courthouse, trying to decipher statutes and authorities and selecting xeroxing to be done to study at home. Typing is done with nine fingers, 15 minutes at a time only, because of the cervical injury.

Why would a woman with pain and physical problems and having to borrow money to fight for justice carry on this battle alone?

Justice. The Constitution of the United States is an anchor to cling to amid all the injustice and heartache.

There is an unfair trial with a proven confused jury and deceit and untruthfulness remains on the record as a monument of destruction to justice in a court of law.

Added to an unfair trial, there is then a repeal of rehearing to the State Supreme Court, and further obstruction of justice. Then "under color of law" more rights are taken in blatent disregard of the rights of a citizen and my entire original file #4916-I is released from the custody of the Court of Appeals, even extending the time of the denial of my rights!

Therefore, I am here before you.

CONCLUSION:

Another Kind Of Law:

The Golden Rule from the Bible:
Matthew VII.12

> "Therefore all things whatsoever ye would that men should do to you, do ye even so to them: For this is the law and the prophets."

The Last Years Most Precious:

Those who are young, seemingly think only the old die and the young never become old. Then in reality, the years pass and the young become older and suddenly the last years become the most precious, where none know which decade will be the last.

This petitioner cannot grow old gracefully into middle age and old age. Instead, there is pain and crippledness, struggle and heartache, and gross injustice left to be my lot in life because of the negligence and wrongful acts and decisions of others.

The Last Plea For Justice:

This appeal is not a battlement of "legal" against "pro se". There is no winning and no losing for the petitioner. What could I win? No one can restore the use of my legs and undo the physical

CONCLUSION:

injuries elsewhere. What could I lose? There is nothing more to take from me to sacrifice to injustice.

Representation:

If a new trial be awarded, this petitioner has representation.

Additur:

If a new trial is not awarded, may there then be an alternative additur based upon the focal point of what the Court of Appeals Division I, State of Washington ruled to be a "sensible award" for a drop foot injury from the case of Ryan v Westgard 12 Wash App 500 (1975) supra.

Alone Together:

Although this case involves only one individual and her damages, the federal questions and the constitutional questions presented by this case are imperative to the well-being of every citizen of the United States of America who could stand in the shoes-of-injustice of this petitioner.

CONCLUSION:

I respectfully ask the United States Supreme Court to recognize jurisdiction and accept jurisidction of this appeal. The Federal questions presented are substantial concerning an unfair trial, denial of rehearing because Rule ROA I-50 is repealed, thus preventing due process to be heard, and the new issue "under color of law" which is the release of original records and file in a pending appeal.

Our Heritage Two Ways:

Petitioners age is 58. My life since June 4, 1971 is living with injuries and pain and far-reaching repercussions of permanent injuries. Life is a future without a future. The added burdens of litigation pro se is a continuity of rejection.

It would be so humanly simple and easy to give up in all ways and remain so until the grim reaper comes to harvest. But the redundantcy of the inner spirit is an infallible endurance through faith and courage.

We have a double heritage: The Day will come when I will stand in the Jurisdiction of The Highest Court before a Preassigned Judge, and Eternal Justice will be There.

But here and now, I am standing before the Highest Court of the Land respectfully asking for Jurisdiction and Justice.

Respectfully submitted,
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